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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

Case No. 12-12020-MG

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 24, 2012

10:21 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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(Doc# 90, 47) STATUS CONFERENCE RE: Motion Authorizing the Debtors to Continue to Perform Under the Ally Bank Servicing Agreements in the Ordinary Course of Business. Marked-Up Documents: 47, 90, 118, 121, 218, 303, 366, 367, 385, 398, 424, 793

(CC: Doc# 507) DEBTORS' Application for an Order Under Bankruptcy Code Sections 327(a) and 328(a) Authorizing Employment and Retention of Centerview Partners LLC as Investment Banker filed by Larren M. Nashelsky on behalf of Residential Capital, LLC. Marked-Up Documents: 507, 703, 747, 831

(CC: Doc# 704) DEBTORS' Application for an Order Authorizing Employment and Retention of Fortace LLC as Consultant to the Debtors Nunc Pro Tunc to May 21, 2012 filed by Larren M. Nashelsky on behalf of Residential Capital, LLC. Marked-Up Documents: 704, 827

HEARING RE: Sale Order (CC: Doc# 538, 291, 292) Marked-Up Documents: 291, 292, 538, 857, 858, 860, 862

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(CC: Doc# 529) APPLICATION Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2014 for an Order to Retain and Employ Moelis & Company LLC as Investment Banker to the Official Committee of Unsecured Creditors, Nunc Pro Tunc, to May 16, 2012 filed by Kenneth H. Eckstein on behalf of the Official Committee of Unsecured Creditors. Marked-Up Documents: 529, 703, 853

(CC: Doc# 526) DEBTORS' Application Under Sections 327(a) and 328(a) of the Bankruptcy Code for Authorization to Employ and Retain FTI Consulting, Inc. as Financial Advisor Nunc Pro Tunc to May 14, 2012 filed by Larren M. Nashelsky on behalf of Residential Capital, LLC. Marked-Up Documents: 526, 703, 747, 850, 855

(CC: Doc# 720) DEBTORS' Application Under Section 327(e) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1 for Authorization to Employ and Retain Severson & Werson PC as Special California Litigation Counsel to the Debtors, Nunc Pro Tunc to May 14, 2012 filed by Larren M. Nashelsky on behalf of Residential Capital, LLC. Marked-Up Documents: 720, 829

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(CC: Doc# 719) DEBTORS' Application for an Order Authorizing
Employment and Retention of Towers Watson Delaware Inc. as
Human Resources Consultants to the Debtors Nunc Pro Tunc to
June 25, 2012 filed by Larren M. Nashelsky on behalf of
Residential Capital, LLC. Marked-Up Document: 719

(CC: Doc# 182) MOTION for Relief from Stay Motion of
Shellpoint Partners LLC f/k/a Shellpoint Mortgage LLC and New
Penn Financial, LLC for Entry of an Order Modifying the
Automatic Stay to Effectuate Termination Notice. Marked-Up
Documents: 182, 184

(CC: Doc# 320) STATUS CONFERENCE RE: Debtors' Motion Pursuant
to Fed. R. Bankr. P. 9019 for Approval of the RMBS Settlement
Agreements. Marked-Up Documents: 320, 321, 328, 392, 473, 481,
519, 705, 857, 858, 860, 862, 865, 866

(CC: Doc# 547) Motion to Extend Time/Debtors' Second Motion
for Order Under Bankruptcy Code Section 521 and Bankruptcy Rule
1007(c) Further Extending Time for Filing Schedules and
Statements, Document#: 547. Marked-Up Documents: 540, 541,
542, 547

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(CC: Doc# 659) MOTION for Relief from Stay, Document#: 659.
Marked-Up Document: 659

(CC: Doc# 274) MOTION to Dismiss Case or for Relief from Stay
12-12020-mg Residential Capital, LLC. Marked-Up Documents:
274, 275, 280, 314, 315, 661, 682

(CC: Doc# 540) MOTION for Relief from Stay to Permit
Prosecution on Non-Bankruptcy Forum Action, Document#: 540.
Marked-Up Documents: 540, 541, 542, 802, 851, 852

(CC: Doc# 451) MOTION for Relief from Stay to Allow
Continuation of Pre-Petition Litigation. Marked-Up Documents:
451, 807

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ALSO PRESENT:

FRANK SILLMAN, (TELEPHONICALLY), for FORTACE LLC

1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 Just briefly, before we begin, I just want to briefly
4 report and I apologize for the late start; I had a meeting in
5 chambers this morning with the examiner, the examiner's
6 proposed counsel and various other constituencies, creditors'
7 committee's counsel, debtors' counsel, AFI's counsel, secured
8 lenders' counsel -- there were a lot of people in chambers. I
9 didn't get the identity of everybody who was in there. The
10 conference was arranged to talk about the scope of the
11 examiner's proposed investigation. The opinion that I issued
12 ordering the appointment of an examiner indicated that the
13 examiner, once he or she is selected, counsel should meet and
14 confer with the various constituencies to try and arrive at an
15 understanding or agreement as to the appropriate scope of the
16 investigation.

17 Mr. Gonzales (ph.) and his counsel from Chadbourne
18 have reported that they've done that and as a result of their
19 discussions with various constituencies there's largely
20 agreement about the scope of the proposed examiner's
21 investigation. And at least at this early stage, about the
22 examiner's estimate of how long an investigation might take, at
23 this point there isn't a specific work plan but the -- as I
24 say, the scope has largely been agreed to. They're going to
25 see if they can iron out the last few points. The Court

1 intends to enter an order hopefully this week that will set the
2 scope of the examiner's investigation. It's subject to
3 possible modification as the examination goes forward.

4 With respect to the estimate of the length of time
5 required to conduct and to complete the examination and report,
6 the initial estimate is approximately six months. There are
7 obviously some parties who think it should be shorter and there
8 are some who may think that more time than that would be taken.
9 I think at this stage, it's a good faith estimate by the
10 examiner and his counsel as to how much time would be required.
11 That may change as events unfold. I think the examiner fully
12 understands the need to do this examination thoroughly,
13 appropriately and as expeditiously as possible.

14 So I anticipate being presented with an order that I
15 will sign and enter with respect to scope and the examiner is
16 clearly underway at this point. With that, let's move forward.

17 MR. PRINCI: Good morning, Your Honor; Anthony Princi
18 of Morrison & Foerster on behalf of the debtors.

19 THE COURT: Good morning, Mr. Princi.

20 MR. PRINCI: Judge, we're here to review with the
21 Court the proposed orders that have been submitted by various
22 parties, respecting the 9019 motion that the debtor filed on
23 June 11th. And there's three things, Your Honor, in that
24 regard that I'd like to address today.

25 First, Judge, I'd like to explain why the proposed

1 order submitted by the trustees and the committee is grossly
2 inappropriate. There are fundamentally --

3 THE COURT: But how do you feel about it?

4 MR. PRINCI: Well -- and hopefully, I'll elucidate why
5 the adverb was appropriate.

6 There are four reasons for that, Judge, and I'm going
7 to explain these in more detail. First, Judge, the provisions
8 of that order essentially usurp the debtors' rights to proceed
9 in the fashion that they're entitled to in connection with this
10 motion.

11 Second, the procedures and associated time frame are
12 not in the best interest of the estate. Third, those
13 procedures as well, Your Honor, sort of turn on its head
14 conventional procedural law that govern these sort of matters.
15 And fourth, their proposed order as I'll get into in more
16 detail, Your Honor, is based on a number of factual
17 inaccuracies that Your Honor would have no reason to appreciate
18 but which I will elucidate for the Court.

19 That's one thing I'd like to do. The second thing I'd
20 like to do, Judge, is walk you through quickly our proposed
21 order and why we believe that that is fair for all concerned
22 and in the best interest of the estate. And the third thing,
23 Judge, and perhaps most importantly, I want to suggest to the
24 Court and the parties how I believe the two proposed orders can
25 perhaps still be reconciled. So with that, Judge, let me begin

1 with the trustees' proposed order and I think I need to put
2 this in context because, as you'd imagine, the devil's in the
3 details here. So I think one thing I unfortunately have to
4 inform the Court is I am operating from a bit of a
5 disadvantage. The proposed order that Your Honor has from the
6 trustees and the committee, we, the debtor, only saw a draft of
7 that -- actually, we never saw a draft of it. We only saw that
8 proposed order Friday at 5 o'clock. So even though we were
9 here the last time, I think it was July 10, what happened
10 obviously is the committee and three of its members -- just let
11 me take a step back so you understand why the committee, I
12 think, why the committee is on board with this.

13 I think this is really driven by the trustees. When
14 you look at the committee composition, you'll see that there
15 are three trustees on the committee; there's Deutsche Bank,
16 there's Bank of New York, and there's U.S. Bank. So that's
17 three out of nine. Then you have two monolines, MBIA and FGIC.
18 FGIC has joined in their order and filed a brief in support of
19 it. And MBIA has previously informed the debtor that it is not
20 in favor of the 8.7-billion claim that is at the heart of the
21 settlement agreement for which we made the 9019 motion. So I
22 think it's understandable how the committee and three of its
23 members ended up doing this together. It is unfortunate,
24 Judge, as I'm going to explain at the end of this that we
25 weren't given an opportunity to see a draft. And ordinarily

1 when parties prepare draft orders, they circulate them. You
2 have the usual caveats; I haven't shown my client, I haven't
3 shown my mother, et cetera, et cetera. But you circulate it
4 amongst all the parties. To get this at 5 o'clock on Friday --

5 THE COURT: Let's pass beyond when you got it.

6 MR. PRINCI: Okay. So with respect to the substance,
7 Judge, let me first go back to the motion itself and what is
8 the motion doing and who does the motion concern. The motion,
9 Judge, concerns some of the largest institutional investors in
10 this country. I think it might be helpful actually, Judge --
11 let me just -- there are probably three to four dozens
12 institutions, I'd say probably like four dozen institutions,
13 Judge, that are signators to the settlement agreement. Amongst
14 them are the following companies, Judge; AEGON Investment
15 Management, Bank West, BlackRock Financial, Caterpillar
16 Insurance Company, Fairlawn Capital Management (ph.), Federal
17 Home Loan Bank of Atlanta, First Federal Bank of Florida,
18 Goldman Sachs Asset Management, HBK Master Fund, ING Investment
19 Management, Metropolitan Life Insurance Company, Neuberger
20 Berman, PIMCO, Pinnacle Bank of South Carolina, Reliance
21 Standard Life Insurance Company, Rocky Mountain Bank of Trust,
22 South Carolina Medical Malpractice Liability Insurance,
23 Teachers Insurance and Annuity.

24 That is just a sampling of who the parties are, Judge,
25 who want this to go forward on a time frame that gets to a

1 finish line consistent, Judge, with their interests.

2 Now, what the trustees have done with the committee
3 is -- and obviously, these people want to move as quickly as is
4 reasonably possible. I think, as I admitted to the Court
5 before, we filed the motion on June 11th and quite candidly I
6 think the time frame was too aggressive. And we heard people's
7 issues there. And we have worked with people to try to give
8 them information. But, Judge, you can't give people
9 information and help them if they don't want information. So
10 let me create this perspective for you.

11 We filed -- first of all, on May 14, which is the
12 petition date, we announced publicly and in our first-day
13 papers this settlement agreement. And we indicate we're going
14 to make a 9019 motion to have it approved. We file that motion
15 on June 11. Now that's a month-and-a-half ago. It's more than
16 two months since the petition date. And you heard the
17 trustees' counsel and you head the committee counsel here.
18 This is the most important issue in the case. Okay.

19 You would think if it's the most important issue
20 they'd be on it. But the trustees, to my understanding, have
21 yet to hire a financial advisor. Now the committee hired a
22 lawyer in one day. The committee hired three financial
23 advisors in a few days. And the trustees who tell you this is
24 so important to them have yet to hire a financial advisor. In
25 terms of information, I stopped asking them, Judge, after

1 numerous calls and meetings we had with them. I stopped saying
2 to them listen, any time you want information we'll give you
3 information. I stopped asking because I never got a response.
4 The first time they've asked for a single piece of paper was
5 6:30 on Friday the 20th, this past Friday. It's tokenism. It
6 asks for things like -- well, let me tell you what it asks for.
7 This is the first time -- and again, they're the ones, Judge,
8 suggesting that they need forever to do this but I guess I'd
9 need forever too if you don't get started. So after the
10 motion's been filed since June 11, this is the first time
11 they've sought information with respect to the merits of the
12 8.7.

13 They asked for all information -- they ask for four
14 things: all information that we provided to the institutional
15 investors' counsel. They ask for any information our experts
16 relied on -- now, Judge, they had that expert affidavit the day
17 we filed the motion, June 11. You wait until the eleventh hour
18 for this hearing to suddenly decide you want to ask for the
19 information that those experts relied upon. Does that suggest
20 they're really diligently looking to see what the merits are of
21 that 8.7? I think not.

22 Then they ask for a list of all the trusts where the
23 debtors serve in the capacity of depositor, seller, mass
24 servicer, enter servicer. You want to just figure that out
25 now? You want the list of the contracts now? I mean -- and

1 I'll get to how much information we've already provided them
2 which is entirely inconsistent with so many paragraphs in their
3 proposed order. So let me jump ahead, Judge, because I think
4 you get the point I'm trying to make.

5 When you look at their proposed order, it is not about
6 the investors' interests; it's not about this estate's
7 interest. It's about the trustees' interest and only the
8 trustees' interests. Let me start, Judge, by first pointing
9 out the factual inaccuracies that underpin this.

10 If you take a look at their proposed order, you look
11 at page 6 --

12 THE COURT: Mr. Princi, did you meet and confer face
13 to face to try and reach a consensual schedule?

14 MR. PRINCI: Tried my best, Judge. But I can't do it
15 myself.

16 THE COURT: Did you -- no, but that -- let me ask one
17 more time. Did you meet face to face to discuss reaching a
18 consensual schedule?

19 MR. PRINCI: Yes.

20 THE COURT: When?

21 MR. PRINCI: July 9th in the offices of one of the
22 counsel to the trustees.

23 THE COURT: And have there been any meetings since
24 then?

25 MR. PRINCI: There's been a follow-up phone call. It

1 was last --

2 THE COURT: Have there been any face to face meetings
3 since then?

4 MR. PRINCI: No.

5 THE COURT: Have you tried?

6 MR. PRINCI: We have been communicating by e-mail. We
7 have been providing them with all the information they have
8 seeking from us. But when we asked them for this, they told us
9 no, they hadn't finished working on it with the committee. So
10 we didn't get it until you got it which was Friday at 5.

11 THE COURT: Go ahead.

12 MR. PRINCI: So, Judge, let's just get to the
13 particulars of the order. If you take a look at page 6 and you
14 look at paragraph 2, the first thing they want us to do is to
15 file another motion and they call it the assumption and
16 assignment motion. And they want us to file that motion. They
17 say you'd file a motion by July 31st to assume and assign all
18 the contracts that you seek to transfer in connection with the
19 servicing sale -- it's a defined term -- that relate to any
20 RMBS trust. Okay. The problem with that is we filed that
21 motion on the petition date. That is the sales motion.

22 Now what the sales motion does, Judge, is it requires
23 by July 25th, tomorrow, that Nationstar and the debtor provide
24 an exhibit that lists all the contracts that are being assumed.
25 We are timely going to do that. We have told the trustees for

1 weeks that we'll be doing that, that we're in the process of
2 doing that. So they will have the list with all the contracts
3 tomorrow, as per the terms of the motion. So that motion is
4 already filed --

5 THE COURT: So do I just check off paragraph 2 as
6 having been done?

7 MR. PRINCI: I think they'll probably have things to
8 say about this, Judge, but I can't see what --

9 THE COURT: In your view, is it --

10 MR. PRINCI: It's done. We have a motion filed.

11 THE COURT: Okay.

12 MR. PRINCI: It's scheduled to be heard on November
13 5th. What they want, which they're going to get tomorrow is
14 the list of all the contracts. But what they don't tell you,
15 Judge, what they don't tell you is with respect then to the
16 next part where they talk about the proposed cure amount and
17 they say what we want the Court to order you to do there is
18 identify any and all existing defaults. Okay. So what have we
19 done in that regard, Judge? We met with them on July 9th and
20 we said look, our business people tell us that literally we
21 don't have any breaches of our servicing obligations and
22 therefore we think the cure amount is zero. Now we understand
23 you folks are going to need to due diligence. And as I -- I'll
24 say to you what I said to them. I said look, the law of big
25 numbers tells me that there's some chance that well-intentioned

1 business people who believe that to be the case could make a
2 mistake. So let's get into the weeds here. Let's have you
3 folks start to do your due diligence. And we said we will make
4 available to you these business people. You get from your side
5 whoever the business people are or the securitization lawyers,
6 whoever it is, anybody you want, lawyers, financial advisors,
7 your business people, and we will produce these business people
8 to you so you can begin your due diligence. And then let us
9 know what documents you want to try to sustain that.

10 THE COURT: Stay with me. With respect to paragraph
11 2 --

12 MR. PRINCI: Yes.

13 THE COURT: -- is there anything that they've included
14 in paragraph 2 that hasn't already been done or will be done by
15 July 31?

16 MR. PRINCI: The offer is outstanding, Judge. We are
17 providing them with the people who can explain to them --

18 THE COURT: That's not my question. I don't see where
19 there's anything in here about providing people to them to do
20 anything. It seems to require that the debtors --

21 MR. PRINCI: We did it already. We told them it's
22 zero.

23 THE COURT: Okay. So --

24 MR. PRINCI: Done already.

25 THE COURT: -- I'll ask my question one more time. Is

1 there anything contained in paragraph 2 that in your view has
2 not already been done or will be done by July 31?

3 MR. PRINCI: No.

4 THE COURT: Okay. So I can check that one off, in
5 your view?

6 MR. PRINCI: Then they want an inventory with respect
7 to all the assigned contracts and the specific provisions that
8 the debtors contend they will assume pursuant to the severing
9 provisions. Well, there's a host of problems with this, Judge.
10 Number one, as we informed the Court on July 10, the way we're
11 going to "sever" which is to say leave behind in this estate
12 the rep and warranty claims relating to the seller debtors, the
13 originator debtors, putback obligations and yet transfer to
14 Nationstar or whoever the highest bidder is, the servicing
15 rights the way we're going to do that. And this motion will be
16 forthcoming -- I think we'll have this filed, Judge, sometime
17 in August. We're going to have the depositor debtors, those
18 are the sellers, they are going to seek to reject those
19 contracts and then the servicer debtors are going to make a
20 motion to assume.

21 Now, what they've said to us is gee, well, what will
22 this look like when it's done? They said give us a template.
23 Can you redline it and show us what a contract will look like
24 if you do this? We said sure and we gave that to them. So,
25 Judge, when I look at this and I say to myself --

1 THE COURT: You're looking at paragraph 3?

2 MR. PRINCI: Par -- beg your pardon?

3 THE COURT: You're looking at paragraph 3?

4 MR. PRINCI: I'm in paragraph 2, right.

5 THE COURT: You're still in paragraph 2?

6 MR. PRINCI: I'm still in paragraph 2 because that's
7 the sever provisions. And with respect to these so-called
8 unenforceable provisions, we've tried to explain that under
9 365(f) we believe 365(f) covers all of those provisions that
10 either say you can't assign this contract or here's a condition
11 and unless you meet this condition you can't assign it -- you
12 know, I can't be any clearer than that. I'm sorry if they
13 don't like the application of the law to the facts in this
14 case. But when you look at paragraph 2 you say to yourself
15 wait a second, why are you asking the judge to order all this?
16 We've been trying to work with you on all this.

17 THE COURT: Mr. Princi, that's not at all helpful.
18 What I want to know, is there anything -- and I thought I had
19 the answer to this but I guess I don't -- is there anything in
20 paragraph 2 which starts on page 6 and finished the top two
21 lines on page 7 --

22 MR. PRINCI: Right.

23 THE COURT: -- that either hasn't been, in your view
24 hasn't been done or won't be done by July 31 which is the
25 deadline they put in the paragraph? I thought you told me that

1 everything's been done.

2 MR. PRINCI: Well, just to be clear for the record,
3 Judge, we don't believe we should have to file another motion.
4 But other than caveat, Judge, which I know Your Honor
5 understood, no. I think all of this has been taken care of
6 already.

7 What --

8 THE COURT: Okay, so you say that the motion that you
9 filed on the petition date is the assumption and assignment
10 motion?

11 MR. PRINCI: Correct.

12 THE COURT: Okay.

13 MR. PRINCI: Okay. So, Judge, that's the first part.
14 And what --

15 THE COURT: But let me just -- I want -- so I'm clear.
16 Maybe I'm behind you on this, but is there anything else in
17 paragraph 2 that you think is inappropriate or has -- you're
18 telling me it's all been done. Well, they put a date of July
19 31. If it's been done, then it's not a problem for you.

20 MR. PRINCI: Judge, I know -- and I'm going to
21 recommend, Judge, the way I think these orders can be
22 reconciled. And I know you don't want --

23 THE COURT: Can we do it my way, please?

24 MR. PRINCI: Sure.

25 THE COURT: Tell me if there's anything in paragraph

1 2 -- this is your last chance -- tell me if there's anything in
2 paragraph 2 --

3 MR. PRINCI: No, Your Honor.

4 THE COURT: -- that you believe is inappropriate that
5 hasn't already been done or won't be done by July 31?

6 MR. PRINCI: I think it's already been done.

7 THE COURT: Okay.

8 MR. PRINCI: Or --

9 THE COURT: That's your last and final answer on this
10 paragraph.

11 MR. PRINCI: Just give me one moment; I think it's
12 already been done, Judge.

13 Well, the July 25th is when we'll have -- tomorrow --
14 is when we'll have the list of the contracts. So, yeah, by
15 July 31, all of this will be done.

16 Judge, where we have an issue with them is with
17 respect to paragraph 3 which then talks about objections that
18 they want to file based on any issues they see with the so-
19 called RMBS inventory. So you go back and the RMBS inventory,
20 Judge, is the list that has all the contracts that are going to
21 be assumed. We have no problem, Judge, working out a date by
22 which they can file an objection to that, but you don't need
23 all this time, Judge, laid out here to deal with that. It's
24 just not -- particularly coming from a party, Judge, that
25 hasn't begun to do any real work here other than worry about

1 its own exposure -- which I don't hold against the trustees the
2 fact that they're concerned about their own exposure. What we
3 have as the debtors, Judge --

4 THE COURT: Tell me what's wrong with this -- I don't
5 want you to speculate about what their motivation is. I'm
6 interested in a schedule.

7 MR. PRINCI: Okay.

8 THE COURT: Okay? Tell me what's wrong with the
9 schedule they propose.

10 MR. PRINCI: Judge, I think the schedule that we
11 proposed makes a lot more sense --

12 THE COURT: Where -- you know, I've got a ton of
13 papers. Do you have an extra copy of that? I've got their
14 schedule in front of me; I'm not sure that I can easily lay my
15 hands on yours.

16 Thank you, sir.

17 MR. PRINCI: Judge, in our proposal, we suggest very
18 specific dates and in connection with these dates, Judge, we
19 don't have any -- if you take a look at the last ordering
20 paragraph, we're suggesting that they file their objections by
21 July 30th.

22 THE COURT: And they want until August 20th.

23 MR. PRINCI: If they want more time, Judge, we'll give
24 them more time on that, okay?

25 THE COURT: Well, July 30th, obviously isn't going to

1 work at this point. So I take it that you're objecting to the
2 August 20th date?

3 MR. PRINCI: We are, Judge.

4 THE COURT: Okay. And what do you believe is an
5 appropriate date?

6 MR. PRINCI: If they need a couple more weeks, Judge,
7 we're happy to give them a couple more weeks post our July 30,
8 so August 14 would be fine.

9 The biggest issue -- I'm sorry, Your Honor.

10 THE COURT: Go ahead.

11 MR. PRINCI: Oh, you're ready, okay.

12 Judge, there is unfortunately -- and I apologize for
13 the sense of he said/she said on this stuff -- but the biggest
14 issue, Judge, with the order you've been presented is the
15 second part of this which says in essence look, we're going to
16 take some objections we had, cure claim objections, and we're
17 going to shelve them. And we're not going to shelve a certain
18 objection we have -- which they've defined, Judge, as
19 limited -- I have to get to the definition, Judge -- so on page
20 4 they have a definition called "limitation of future
21 performance". And they say at the bottom of that that because
22 the resolution of the scope of the obligations that must be
23 assumed may impact the bidding at the auction this issue must
24 be resolved prior to October 23.

25 The reality, Judge, is it doesn't impact the sale at

1 all. What it impacts is them. That's the indemnification
2 provision, Judge. And what the asset purchase agreement says
3 is that the present purchaser, Nationstar, is not going to be
4 assuming any liabilities that arose from facts prior to the
5 closing date. So the issue for the trustees is they're saying
6 look, we have an indemnification right under these PSAs. Now
7 you, Nationstar, are saying that you're going to assume those
8 agreements and with that the indemnification obligation. But
9 you, Nationstar, say you're only prepared to stand behind that
10 for any acts or events that arise after the closing date that
11 then give rise, let's say, to a suit against us. And
12 admittedly, Judge, the trustees get sued a lot in nuisance
13 lawsuits. And so they -- the indemnification, we understand
14 their issue.

15 That's not going to affect the auction process;
16 there's not going to be a sale because if somebody wants to
17 insist on that, you either have to cure it or not. That's why
18 we should have a hearing to find out what their cure claims
19 are. And that's why we don't want to hold this in abeyance.
20 So we want their cure claims, Judge, and we're entitled not to
21 have either some combination of uncertainty under a sword of
22 Damocles hanging overhead. If they believe they have cure
23 claims, we should set up a date to have those cure claims
24 decided. And, Your Honor, we have done that. In our proposed
25 order, that's what we say. So there's no reason to hold this

1 in abeyance.

2 The biggest issue of all in this proposed order is
3 paragraph 5(e). And that's on the last page, that's page 9.
4 And I didn't understand what this was about and last night
5 spoke to committee's counsel and what this is about, Judge, is
6 if you go back to paragraph 5(c) where they say --

7 THE COURT: Let me just read (e) again. Hold on.

8 MR. PRINCI: Sure.

9 THE COURT: Go ahead.

10 MR. PRINCI: So this ties in with their earlier
11 paragraph and how they want to do this.

12 THE COURT: Which paragraph are you talking about?

13 MR. PRINCI: It's the earlier subparagraphs in 5.

14 They say look, we're going to complete our evaluation by
15 November 1 and that's where the good new lies, Judge, because
16 in our proposed order, Judge, we too have a date quite similar.
17 If you look at our proposed order and you look at paragraph --
18 ordering paragraph 5, it says, "The deadline for the trustees
19 to accept or reject the RBMS trust settlement will be the
20 earlier of ten days after entry of an order approving the RMBS
21 trust settlement or October 31, 2012." So we're very close
22 with them, Judge, in terms of the time that they should have to
23 decide to opt in or opt out.

24 But what they want to do thereafter, Judge -- putting
25 aside the little debate we have on whether we're off a week or

1 so with them -- what they want to do is they want to say look,
2 at that point what we'll do is we'll see if we can come to an
3 agreement with you -- this is all in paragraph (c), 5(c) -- and
4 if we can come to an agreement with you, you've got to file
5 another 9019 motion. And then it says, "And on or before
6 November 30, the RMBS trustees may file motions seeking court
7 approval of the settlement." And then you look at paragraph
8 (e) and it says, "In the event by March 31st, any court order
9 that is conditioned to the effectiveness of the RMBS settlement
10 has not been entered", then this thing can blow up.

11 What that's about, Judge, we believe and we fear, is
12 the Article 77 proceeding that you heard about on June 25th.
13 Now look, if they want to come up today and say we will not
14 seek to make an Article 77 proceeding and they want to say you
15 have jurisdiction, Judge, this we can work out. We are happy
16 to do a couple of things that are important to them. Number
17 one, we're trying to work with them on the indemnification
18 issue I mentioned earlier. And Nationstar and we are in
19 discussions to try to resolve that for them.

20 And number two, they have a concern which you heard
21 day one on June 25th when we began discussing this, they have a
22 concern about getting sued. Well, their parochial interest,
23 Judge, we don't believe should hold up the show here. But that
24 having been said, we want to work with them to try to help
25 them. If they believe that this Court has jurisdiction to,

1 under CPLR, Article 77, issue a ruling that says they have
2 complied with their trust duties. If this Court has
3 jurisdiction, we are happy, Judge, to actually work with them
4 to set that up as part of the schedule. We're not looking to
5 stand in their way of getting comfort. But what we can't do is
6 let their desire for comfort stand in the way of our rights to
7 move this case forward in a sensible way. And that's what
8 their order does.

9 So there's a reason our order is simple and there's a
10 reason their order is incredibly complex. And their order
11 obfuscates what they're really still about. I know you don't
12 like the fact that today I have been extrapolating what I
13 believe their intentions are. But I've been living with these
14 folks, Judge, since our last hearing and before that. And I
15 haven't gotten cooperation. I haven't gotten document
16 requests. They don't have an expert yet. And everything
17 points to the fact, Judge, that they're only worried about
18 their parochial interest. We are trying to work with them but
19 the case has to proceed, Judge. And all those investors that I
20 mentioned before, Judge, that's the reason why they entered
21 into this settlement agreement, because they don't have the
22 trust in these trustees to look out for their interests. So
23 they took it into their own hands. And they and we should be
24 allowed to get a ruling from you, Judge, as to whether you
25 believe -- and we'll present a host of evidence for you when

1 you have this hearing -- whether you believe that that figure,
2 8.7 billion, was a fair settlement. And if they can't, Judge,
3 get out of the way of their own parochial interest, it just
4 shouldn't stand in the way of this case coming forward.

5 Judge, do you have any other questions?

6 THE COURT: I probably will but nothing there.

7 MR. PRINCI: All right. Thank you, Judge.

8 Let me hear from the committee first and then, Mr.
9 Siegel, why don't you come on up?

10 MR. BENTLEY: Good morning, Your Honor; Philip Bentley
11 of Kramer, Levin on behalf of the Official Creditors'
12 Committee.

13 Your Honor, let me say at the outset that I'd like to
14 make clear what the committees' goals are here because Mr.
15 Princi raised certain questions about our goals and I think
16 it's important that we're clear on that subject. We actually
17 share a lot of the debtors' goals, if not most of the debtors'
18 goals, with respect to the order that Your Honor is considering
19 entering. We share with the debtor the goal of maximizing the
20 sale proceeds. We want to do anything we can to avoid a
21 litigation process that might jeopardize that. We also share
22 the debtors' goals in opposing any objections the trustees may
23 assert to the sale process. We're actually joined at the hip
24 with the debtors on that issue.

25 We've heard that trustees have lots of substantial

1 objections to the sale process. They've told us in detail what
2 those are; we summarized the very briefly in our papers. As we
3 mentioned in our papers, we actually think those objections
4 don't have merit and we intend to work with the debtor to
5 oppose those objections if they have to be litigated. But what
6 drove our thinking with respect to developing this procedural
7 order is that we're concerned that if the parties are forced to
8 litigate those issues over the next few months it could chill
9 the sale process. It could be damaging. And we're concerned
10 that the debtors' process would force the parties to do that.

11 The one other thing I would say, Your Honor, is a
12 question was raised about committee process and the process
13 we've followed with respect to the debtor. To be very clear,
14 Your Honor, we recognize, as I just said, that we're adverse to
15 the trustees on some of the central issues here and whenever
16 those issues have come up and whenever the issue of this
17 schedule has come up in committee meetings, we've asked the
18 trustees to recuse themselves. They have. The order that
19 we've presented to Your Honor, we've negotiated at arm's length
20 with the trustees, seeing them as adversarial to us in key
21 respects. And we got a deal that we think is in the best
22 interests of the estate.

23 One more comment at the outset, just about the process
24 that we've gone through with the debtor leading up to today.
25 We actually reached out to the debtor on Tuesday. We struck an

1 agreement in principle with the committees back on Tuesday and
2 I called the debtors --

3 UNIDENTIFIED SPEAKER: The trustees.

4 MR. BENTLEY: I'm sorry, Your Honor; I misspoke.

5 Yes, with the trustees on Tuesday, Tuesday late in the
6 day, and I called the debtors' counsel and left a voicemail
7 Tuesday evening saying I have news to report relating to this
8 schedule, call me back. They weren't able to get back to me
9 until Thursday morning. We spoke at length at that time and I
10 walked them through the approach that is now reflected in this
11 order in some detail. We didn't actually share the actual form
12 of order with them until it was filed because, I can tell you,
13 Judge, we were still negotiating the language of the order
14 until 4:45 Friday afternoon. So I do want to dispel any
15 suggestion that we haven't been trying to work with the debtor.
16 We have been. We hope to continue working with them.

17 In terms of Mr. Princi's comments, I think some of his
18 comments reflect a not-complete understanding of what we're
19 trying to achieve here and it may be our fault because the
20 language of our proposed order doesn't reveal our intentions in
21 a crystal clear fashion. And so I spoke with Mr. Princi
22 yesterday evening -- I'm happy to continue to speak with him --
23 to clarify what our intention is and I'd like to do that with
24 the Court.

25 Now Mr. Princi raised really three, I think, principle

1 objections to the order we're proposing. The first relate to
2 the details of paragraphs 2 and 3 and as Your Honor, I think,
3 made clear, I'm not sure there's really a lot that's in dispute
4 as to those paragraphs. In any event, the details of those
5 paragraphs, for example whether the trustees' deadline is
6 August 14 or August 20, we'd like to step aside and leave that
7 to be an issue to be discussed or argued between the trustees
8 and the debtor.

9 THE COURT: Let me ask you this question first. Mr.
10 Princi argued that the debtor should not be required to file
11 what you refer as another assumption and assignment motion. He
12 said -- this is paragraph 2 of the trustees' and committee's
13 proposed scheduling order -- he said they did that on day one
14 of the case. You agree or disagree that -- does the motion
15 that was already filed satisfy what's been drafted in paragraph
16 2?

17 MR. BENTLEY: Your Honor, and I apologize if this is
18 not as helpful to the Court as it might be, but that's exactly
19 the sort of issue where I do think it's better responded to by
20 the trustees than by us.

21 THE COURT: You've signed onto this --

22 MR. BENTLEY: Understood, Your Honor. And --

23 THE COURT: What's your position? I'm not letting you
24 off the hook.

25 MR. BENTLEY: Our suggestion, Your Honor, is there are

1 details in paragraphs 2 and 3 as to which we think further due
2 discussion might be helpful, particular --

3 THE COURT: Answer my question. Does the motion that
4 the debtor has filed -- I asked Mr. Princi -- it took a lot of
5 time, a lot of questions to get what I thought finally was a
6 clear answer -- but I asked the question whether the debtor has
7 already done or will by July 31st all of those things that are
8 required by paragraph 2. One of those things relates to this
9 filing of an assumption -- what is defined as assumption and
10 assignment motion. Mr. Princi's position is that was done on
11 day one of the case. What is the committee's position?

12 MR. BENTLEY: Your Honor, we do not have a position on
13 that.

14 THE COURT: Come on.

15 MR. BENTLEY: Your Honor, we are not opposed to the
16 position Mr. Princi took.

17 THE COURT: All right. You know, you can't -- if
18 you're going to participate in this process, if you're going to
19 suggest a scheduling order, you have done that, you have
20 suggested this specific scheduling order I'm asking you about,
21 you need to have a position whether the debtor has already
22 satisfied what you propose to require. I will not accept "we
23 don't have a position". You have to have a position.

24 MR. BENTLEY: If I may, Your Honor --

25 THE COURT: If you don't have a position, then go sit

1 down.

2 MR. BENTLEY: If I may, Your Honor, our position is we
3 believe that this is an appropriate requirement to impose on
4 the debtor --

5 THE COURT: That doesn't answer the question.

6 MR. BENTLEY: I understand, Your Honor, but as to
7 what --

8 THE COURT: Can you answer my question, Mr. Bentley,
9 yes or no?

10 Did the motion that the debtor filed at the outset of
11 this case fulfill the requirement of the order you're proposing
12 that I enter? Yes or no?

13 MR. BENTLEY: We think it did, Your Honor,

14 THE COURT: Okay. Let's move on to the next point.

15 MR. BENTLEY: Okay.

16 As I heard it, Your Honor, Mr. Princi raised two other
17 issues, two other concerns about this order. The first one is
18 he said we don't want the sword of Damocles hanging over the
19 parties' heads. And what I believe he meant by that was that
20 he thinks that under our proposal, there's a threat that won't
21 be resolved until sometime after the sale hearing, the November
22 5 sale hearing, that the trustees could assert that they have
23 claims against the buyer, a threat that the buyer is not taking
24 the assets free and clear of all trustee claims. That, Your
25 Honor, we think is mistaken and we tried to address that

1 clearly in the order and I think we did.

2 THE COURT: Walk me through that.

3 MR. BENTLEY: Yes. Certainly, Your Honor.

4 That's addressed in paragraph 4 of the order. And
5 what that paragraph says, Your Honor, is it says the trustees
6 will not object to the assumption and assignment of the PSAs
7 free and clear of any lien, claim or encumbrance. We think
8 that's as clear as it could be and we think that will give any
9 buyer the comfort that there is no threat hanging over its
10 head.

11 The essence of the deal that we struck, Your Honor, as
12 reflected in this paragraph, is the trustees have said yes, we
13 have sale objections; yes, if we don't settle or if Your Honor
14 doesn't enter this order we, the trustees, would object to the
15 sale and say we do have claims against the buyer. But they've
16 said in the context of this order they would withdraw those
17 objections and instead, agree to reserve all of those issues
18 until after the sale hearing. And then if they haven't
19 settled -- and the hope is that they would have settled by the
20 November 15 deadline; if they did settle that would resolve the
21 sale issues as well as the RMBS issues -- but if they haven't
22 settled by November 15, litigation would then commence as to
23 those issues and their agreement is that any claims they've
24 provide up, at most the remedy they would have would be a cure
25 claim against a portion of the proceeds of the sale.

1 THE COURT: Show me the language in here that does
2 what you've just described.

3 MR. BENTLEY: Yes, Your Honor. It's paragraph 4
4 and --

5 THE COURT: I see the paragraph 4 language. How does
6 that mesh with what's in paragraph 5?

7 MR. BENTLEY: Okay, well two parts. First, the
8 language I referred to earlier that they won't object to the
9 assumption free and clear -- assumption and assignment free and
10 clear. And then it goes on to say provided that the sale order
11 provides that the cure claims -- and I'm paraphrasing, Your
12 Honor -- will have administrative expense priority in the case
13 and attached to the sales proceeds subject to liens. And it
14 then goes on to say for the avoidance of doubt, the amount of
15 the cure claims shall not exceed the sale proceeds. And "sale
16 proceeds" is defined in an earlier paragraph to mean a portion
17 of the overall sale proceeds.

18 THE COURT: But what rights are being reserved in
19 paragraph 5?

20 MR. BENTLEY: Their right to litigate the amount of
21 their cure claim. Now that litigation will have a number of
22 different facets to it. So, for example, Your Honor's aware
23 that they're objecting to the severance of some of these
24 agreements. And the way that plays into the cure claim is to
25 the extent any obligations cannot be severed then any breaches

1 of those obligations would give rise to a cure claim. So
2 severance and cure are joined at the hip. And we would
3 contemplate if there were no settlement, all of those issues --
4 I'm sorry, Your Honor. I keep hitting -- all of those issues,
5 severance, cure, would be litigated and would yield a result,
6 an amount of their allowed cure claim.

7 THE COURT: That won't exceed the sale proceeds.

8 MR. BENTLEY: Correct.

9 (Pause)

10 THE COURT: In paragraph 5(c) --

11 MR. BENTLEY: Yes, Your Honor, the RMBS settlement
12 that's referenced in 5(c) is, what, settlement of the cure
13 claims?

14 MR. BENTLEY: It's settlement of what's defined as the
15 disputed matters which is defined earlier in paragraph 5 to
16 include both the cure claims and all other sale-related issues
17 plus the RMBS disputes that relate to the amount of the general
18 unsecured claim.

19 THE COURT: So what --

20 (Pause)

21 THE COURT: Just walk me through. The RMBS claim
22 settlement is what?

23 MR. BENTLEY: The RMBS -- the proposed RMBS claim
24 settlement is the settlement that the debtors are seeking
25 approval of.

1 THE COURT: Okay. And this order would put off
2 consideration of that until when?

3 MR. BENTLEY: The basic difference -- the fundamental
4 difference between this order and the debtors' proposed order
5 is both our order and the debtors' order give the trustees a
6 deadline that's pretty similar, either October 31, in the
7 debtors' case; November 15, in our case. The difference is the
8 debtors would ask Your Honor to approve their settlement offer
9 earlier in October before it's been accepted by the trustees.
10 We would say that should be deferred and that if there is a
11 settlement announced by the November 15 deadline, the trustees
12 would then file -- I'm sorry -- the debtor would then file an
13 amended 9019 motion which would seek approval of the settlement
14 that at that point it actually would have reached.

15 THE COURT: So this schedule would give no effect to
16 the proposed settlement that the debtors have reached with the
17 investors who have given directions to the trustees to approve
18 the settlement.

19 MR. BENTLEY: Your Honor, if I --

20 THE COURT: Do I understand that correctly?

21 MR. BENTLEY: I think Your Honor has it partly right.

22 THE COURT: Which part do I have right and which do I
23 have wrong?

24 MR. BENTLEY: Okay. The part you have right is we
25 would -- under our schedule, the Court would not be ruling on

1 any settlement until such time, if any, as a settlement is
2 reached with the trustees. So if that's what Your Honor meant,
3 that's correct.

4 The part where I think the answer may be no is we do
5 think that the settlement the debtors have reached with the
6 trustees is significant. And we don't want to just brush it
7 aside and treat it as having no consequence. We do think, as
8 we've pointed out --

9 THE COURT: The settlement they reach is not with the
10 trustees. It's with the holders of more than twenty-five
11 percent of various classes of RMBS securities, am I correct?

12 MR. BENTLEY: That's absolutely right. And so, as we
13 said in our papers --

14 THE COURT: And the trustees don't want to be forced
15 to have to deal with that.

16 MR. BENTLEY: If I may, Your Honor, our view as to the
17 significance of that is (1) Your Honor's absolutely correct, if
18 I understand your suggestion, that it doesn't have any binding
19 effect on the trustees.

20 THE COURT: What doesn't have a binding effect on the
21 trustees?

22 MR. BENTLEY: The settlement between the debtors and
23 the investors.

24 THE COURT: Right.

25 MR. BENTLEY: No binding effect on the trustees.

1 THE COURT: Well, we'll see. But --

2 MR. BENTLEY: We do think it may have some persuasive
3 effect on the trustees.

4 THE COURT: So does the debtor. And that's why they
5 want to go forward with that 9019.

6 MR. BENTLEY: Well, and we agree with the debtors on
7 that point. We just think that under our structure, it would
8 have the same persuasive effect. We think that's important.
9 We don't want to throw that away. But we don't think it's in
10 any way diminished under our structure because our structure
11 says November 15, just a few weeks after the debtors' deadline,
12 Trustees, you'll have to either say yea or nay.

13 THE COURT: No. You want -- the proposed schedule
14 that you have, you and the trustees, basically would have a new
15 round of settlement negotiations between the trustees and the
16 debtors and, I suppose, the committee. And only upon the
17 successor failure of that -- well, what happens if the trustees
18 and the debtor are unable to reach agreement? What happens?

19 MR. BENTLEY: Then we flip into litigation. And this
20 is addressed in paragraph (d) -- 5(d) of our order which says
21 if a settlement hasn't been finalized and filed by November 15
22 then the parties submit a litig --

23 THE COURT: Then you want to start a new schedule all
24 over again. That's not going to happen, okay? We're coming
25 out of this. I'm not saying this is the schedule or theirs is

1 the schedule. That's not going to happen.

2 MR. BENTLEY: We expect it could be very short, Your
3 Honor, because we do expect --

4 THE COURT: Well, I don't plan to wait until November
5 15th to set a schedule for some future litigation. It's not
6 going to happen, Mr. Bentley.

7 MR. BENTLEY: Well, Your Honor, I want to be clear.
8 I'm not sure we're proposing something different than what Your
9 Honor has in mind. If you look --

10 THE COURT: Am I reading these words wrong? "If a
11 settlement of Disputed Matters is not finalized and filed with
12 the Court on or before November 15, 2012, then the parties
13 shall submit to the Court a litigation schedule on the Disputed
14 Matters."

15 MR. BENTLEY: Litigation --

16 THE COURT: I'm not waiting until November 15th for a
17 schedule.

18 MR. BENTLEY: Okay. Fair enough, Your Honor. I just
19 wanted to point out that paragraph 5(a) does say discovery
20 starts now. So discovery is not being held in abeyance until
21 November 15 -- it's starting now. And if Your Honor wants to
22 set the litigation schedule now, we don't object to that, Your
23 Honor. We don't object --

24 THE COURT: Did you try and come up with a
25 comprehensive schedule? I don't want to leave uncertainty in

1 anybody's mind about how this matter is going to proceed from a
2 scheduling standpoint. Okay? Whether the trustees have been
3 diligent or not diligent in pursuing discovery so far or
4 retaining experts, I, frankly, don't care. What I care about
5 and what I want -- I want everybody on the same page that you
6 know this is what the schedule's going to be. It can
7 accommodate further negotiation efforts to resolve issues and I
8 hope that occurs. But if it doesn't, everybody's going to know
9 this is the deadline by which I have to do various things.
10 There will undoubtedly be further orders from the Court,
11 procedure orders, about how any contested hearings will go
12 forward. That doesn't have to have that level of detail. But
13 I don't want anybody under any misimpressions. I don't want to
14 come back in November and have anybody saying, well, the
15 hearing should be next week and so the schedule should be --
16 you know, everything gets filed tomorrow. That isn't going to
17 happen. Nor am I going to hear from the trustees that we were
18 unable to resolve these disputed matters and so we have a
19 schedule that takes us out a few months. That isn't going to
20 happen.

21 MR. BENTLEY: We're happy to address these issues now,
22 Your Honor, if Your Honor thinks it's helpful to have us go out
23 into the hallway and try to --

24 THE COURT: Well, you're not going to go out --

25 MR. BENTLEY: -- fill in those holes.

1 THE COURT: -- into the hallway. But I'm telling you,
2 what I am going to order direct is that after the hearing
3 today, I want the counsel to meet face-to-face day to day until
4 completed with a comprehensive schedule. And if there are
5 competing provisions with dates, put them both in and indicate
6 who supports which one and who opposes which one. And I'll
7 resolve it. Okay? But I'm not going to deal with two totally
8 different structures of orders that some of which leave dates
9 way too open and say come back in November and we'll talk about
10 a schedule. That's not acceptable. Okay. I don't care -- I'm
11 not casting blame for where you all are today. The fact that
12 there may have been one face-to-face meeting weeks and weeks
13 ago and exchange of e-mails, that lies in everybody's court.
14 That's unacceptable. Okay. What's going to happen is you're
15 going to meet day-to-day, all day if necessary, and you're
16 going to try to hammer out a comprehensive schedule that fills
17 in -- and to the extent parties disagree, you'll come in at a
18 separate hearing very soon and we'll iron it out. But what I
19 have before me, these two proposals -- I have to read tea
20 leaves to understand what the committee and the trustees are
21 proposing. Okay? I don't like to read tea leaves.

22 MR. BENTLEY: We're happy to follow Your Honor's
23 suggestion.

24 THE COURT: Tell me why I shouldn't go forward and
25 hear the 9019 that the debtors filed and any objections to it

1 before the rest of these procedures that you've proposed. I
2 mean, aren't the debtors entitled -- it may not get approved.
3 And there may be some very substantial problems with it. And
4 it may get rejected. Okay? They filed the motion. They want
5 a hearing. There's a proposed schedule. You agree or disagree
6 but the schedule you proposed is one that puts a whole bunch of
7 other things in the way of the Court hearing it. That's the
8 way I perceive these differences. Okay? So why shouldn't I go
9 ahead, for better or worse, and decide the 9019 that's already
10 been filed and not wait to see whether there's some new 9019
11 that'll be filed or not?

12 MR. BENTLEY: Your Honor, one concern -- I have a few
13 concerns about that. One concern is what we're proposing to
14 you does rest on an agreement with the trustees. And Your
15 Honor will have to ask the trustees if they would still be
16 prepared to make the concessions they're making as to the buyer
17 taking free and clear, if Your Honor were to impose that
18 structure, that schedule. That's issue number one that I have,
19 Your Honor.

20 The second is --

21 THE COURT: So if they don't get all their cards,
22 they're going to go home.

23 MR. BENTLEY: If Your Honor can get their consent to
24 this, God bless. Your Honor, we've done our best and this is
25 the deal we've been able to strike.

1 THE COURT: But you'd not sat down with the debtors'
2 counsel to see whether within these two proposed orders that I
3 have. There's common ground that can be achieved that still
4 includes this consent to a free and clear sale but comes closer
5 to accommodating what the debtors' needs and interests are.
6 That hasn't happened.

7 MR. BENTLEY: We've had a number of intensive
8 discussions with Your Honor (sic) that did take place over the
9 phone rather than face-to-face. But we have had a number of
10 intensive discussions with the debtors.

11 THE COURT: Anything else you want to note?

12 MR. BENTLEY: I just want to respond to the one other
13 concern that Mr. Princi raised about the Article 77 process.
14 And I want to make sure that the committee's position on that
15 is clear. And that is, we recognize that the trustees may ask
16 Your Honor to review the fairness of the settlement as to the
17 certificate holders, as to the beneficiaries. We recognize
18 that there is a big issue as to whether Your Honor has
19 jurisdiction over that or not and we don't wish to prejudge
20 that issue. What we've said to the trustee is if they want to
21 file that motion and ask Your Honor to consider we certainly
22 aren't going to try to stop them from filing the motion. We
23 have said, though, that we don't want any motion of that sort
24 to delay the consummation of a settlement. That is, if a
25 settlement is reached, we want it to be clear that that

1 settlement will become final within a limited period of time
2 and will not be delayed indefinitely while they try to get this
3 approval that they would like to get. The order that we've
4 submitted to the Court is consistent with that approach.

5 THE COURT: How is it consistent with that approach?

6 MR. BENTLEY: The order contemplates that they may
7 file a motion of this sort. That's in paragraph 5(c). It says
8 if they are going to file a motion of that sort, they have to
9 do it no later than November 30. But it doesn't say anything
10 about the outcome of that motion or whether Your Honor
11 dismisses it for lack of --

12 THE COURT: It's what I was talking about, tea leaves.
13 I mean --

14 MR. BENTLEY: -- for lack of jurisdiction.

15 THE COURT: The description in paragraph 5(c), one had
16 to read tea leaves to understand what type of motion this
17 potentially contemplated.

18 MR. BENTLEY: It was deliberately vague, Your Honor,
19 because the trustees have not yet come to rest on exactly what
20 sort of motion they plan to file. But that's why I did want to
21 make clear to Your Honor what's intended here and why it was
22 drafted the way it was.

23 The other provision that bears on this, Your Honor, is
24 paragraph 5(e). And this provision is a bit of a mouthful.

25 THE COURT: Yeah. Could you walk me through it?

1 MR. BENTLEY: Yes. I will, Your Honor.

2 THE COURT: 'Cause I see getting to March 31 and then
3 have everything blow up because the trustees decide, nah, we're
4 not going to waive the condition. And so, we're just going to
5 walk away. Let's go back to square one.

6 MR. BENTLEY: The key point that I'd like to make,
7 Your Honor, is paragraph (e) is predicated on an assumption,
8 something that may or may not happen. It says in the event
9 there's a -- that the settlement is conditioned on a court
10 order being entered. We do not want to -- we certainly do not
11 want to give the trustees the right to insist that any
12 settlement they reach with the debtors have a condition
13 subsequent of that sort. And this does impose any such
14 requirement on the debtors. And if we need to make that more
15 clear, we're happy to because I understand the debtors read it
16 differently than we intended. But the trustees certainly can
17 ask the debtors whatever they want. They can ask the debtors
18 to include a condition subsequent. Frankly, we would hope that
19 the debtors say no. But the point of this paragraph is that if
20 the debtors were to say yes and if that order weren't obtained
21 by March 30 then we would say enough. The point of this is to
22 say you can't hold up the process indefinitely. At most, you
23 can hold it up till March 30th in the event, which we hope is
24 unlikely, that the debtors have agreed to give them a condition
25 subsequent of this sort. That's the intended effect of this

1 provision. And as I said, if Your Honor thinks it needs
2 clarification, we're happy to clarify. All of these provisions
3 were drafted in some haste.

4 THE COURT: You say they were drafted in haste. Where
5 have you all been? I mean, this issue, the need for a
6 schedule, has been clear for a very long time. The status
7 conference has been adjourned before. It got put on for today.
8 And now I hear that orders -- you know, Mr. Princi's
9 complaining he didn't see this order till it was filed on
10 Friday. And each side -- you know, that's unacceptable.

11 MR. BENTLEY: Your Honor, I do think that the language
12 here accomplishes its effect.

13 THE COURT: Okay. We'll see.

14 MR. BENTLEY: But I admit that the intent behind it
15 needs to be unpacked a bit.

16 THE COURT: Okay. Let me hear from Mr. Siegel.

17 MR. BENTLEY: And so, that's what I was trying to do
18 for Your Honor.

19 THE COURT: Let me hear from Mr. Siegel.

20 MR. SIEGEL: Good morning, Your Honor. First of all,
21 I apologize --

22 THE COURT: Just make your appearance for the record,
23 Mr. Siegel.

24 MR. SIEGEL: Glenn Siegel on behalf of Bank of New
25 York now as one of the RMBS trustees. As I said other times

1 when I've gotten up, we try to speak collectively. I'm sure my
2 colleagues will pipe up if they need to, if I've left something
3 out or I've said something different than what their position
4 is. But as a general matter, you should assume that we're
5 speaking collectively.

6 Your Honor, based upon the discourse between you and
7 the debtors' counsel and the committee's counsel, I'm kind of
8 throwing out my presentation and I want to hit upon some points
9 and I want to answer whatever questions you have.

10 I want to work backwards for a moment because there
11 was one thing that Mr. Princi said that I took some -- I felt
12 good about.

13 THE COURT: You felt good about?

14 MR. SIEGEL: I did.

15 THE COURT: Did you hear that, Mr. Princi?

16 MR. PRINCI: Only one?

17 MR. SIEGEL: Yeah. Only one. Sorry.

18 THE COURT: Take what you can get.

19 MR. SIEGEL: The idea that somehow the trustees expect
20 that this Court is going to wait around while we get an order
21 under Article 77 in New York state court is not on the table
22 and we're not asking for that. Let's just start with that. We
23 recognize that in order to meet the needs of this case, there
24 has to be some sort of an expedited process. And what we have
25 done was we have come up with what we think is an expedited

1 process that streamlines things so that we can reach at an
2 endpoint that we think is not disruptive to the administration
3 of the estate generally. And to be clear, the March 31st day
4 is based on an assumption that the debtor can contest because
5 the reason we have a March 31st date -- and I appreciate
6 everybody wants to characterize this as the trustees' parochial
7 interests. But what this is really designed --

8 THE COURT: You know, I'm really not moved by any of
9 that.

10 MR. SIEGEL: Well, but --

11 THE COURT: If you and your client -- if you aren't
12 looking out for your client's specific interests, I'd be
13 shocked. So that has no -- that argument doesn't resonate.
14 Okay?

15 MR. SIEGEL: But I do want to mention that there are
16 other parties here involved. As Your Honor has said, we have
17 received our letters, which we've now attached to our pleadings
18 so you can see the letters we've received, that represent -- or
19 represent twenty-five percent of some group of 390 of
20 approximately 500 trusts that are suggesting to us that we do
21 this deal. From our standpoint, it is important in this
22 process we're describing to let the other certificate holders
23 have an opportunity as well to decide what they want to do. We
24 have sent general notices out but we think there's a formal
25 process that's useful. It does have the benefit of protecting

1 us as well. But it also has the benefit of letting those
2 people have their say. And I want to let that go.

3 THE COURT: Well, the better you are -- it doesn't
4 mean you pers -- the better collectively the process allows as
5 many of the investors to sign on, the more likely they're going
6 to get the trustees to go along. So I think building in time,
7 not too much time, but building in time that would encourage as
8 many as possible to sign on makes it more -- this, from my
9 standpoint, was an unusual provision because I've previously
10 dealt with indenture provisions that allow trustees to take
11 certain actions if a majority or two-thirds, depending on the
12 indenture, direct certain action. I've never seen one that
13 said twenty-five percent.

14 MR. SIEGEL: This is -- what's unusual about these
15 deals, generally, is they live in the structured world. So
16 they don't look like the typical deals. And moreover, one of
17 the additional difficulties we have is because of the structure
18 of these deals and because of the need for off-the-balance
19 sheet treatment which people gave opinions for, these
20 obligations cannot be ResCap obligations. They have to be
21 trust obligations. And that's why we're here in the first
22 place talking about what we're talking about.

23 I would note, Your Honor, this March 31st date
24 presumes, based upon our estimate, as to what a suitable period
25 of time to give the certificate holders is to file objections.

1 THE COURT: Mr. Siegel, did you sit down with Mr.
2 Princi --

3 MR. SIEGEL: We did not.

4 THE COURT: Okay. You're going to do that.

5 MR. SIEGEL: Understood.

6 THE COURT: Okay.

7 MR. SIEGEL: And we will do that.

8 THE COURT: We don't have to spend more time on the
9 date now. It may or may not be appropriate. After you explain
10 your concerns and interests and what's motivating it and he
11 explains his, you hopefully will resolve the issue.

12 MR. SIEGEL: And the other point that we want to make
13 very clearly is -- and I appreciated what Mr. Princi said about
14 outstanding objections to the sale and not creating problems to
15 the sale. And I think that Mr. Princi and his client will have
16 the opportunity to object to the limited number of sales
17 objections we've reserved.

18 THE COURT: Respond to the objections that you're
19 going to file.

20 MR. SIEGEL: That's exactly right. And those limited
21 number of sales objections relate to two things. They
22 relate -- which are basic and we could not take them out and
23 move them into the cure claim corner.

24 The first thing is simply whether or not the purchaser
25 can perform going forward. By the way, we have no reason to

1 believe they can't. But we can't turn that into a cure claim.
2 And the other is simply our understanding of what obligations
3 going forward the purchaser's going to undertake. Mr. Princi
4 is correct that that principle obligation has to do with
5 indemnification. But it's not just indemnification of the
6 trustees. It's indemnification of the trust. The question is
7 who will bear the cost of these particular charges. You know,
8 the example -- I think I gave it at the last court hearing.
9 But the classic example is three months after the closing, a
10 lawsuit arrives and some county in some state is suing for
11 unpaid taxes for the last three years.

12 The question is what will the successor servicer do
13 with that. There are two issues that attach to that. One is,
14 will they pay the ongoing expenses and will they defend the
15 litigation. We believe that under the current document as
16 written, the APA, that they will now. Now Mr. Princi has said
17 that they're making efforts to change that and we appreciate
18 that. But until that happens, we have to reserve on the
19 objection.

20 The second point is who pays the judgment. And that's
21 a different issue. And that may very well not be something --
22 we think that issue is something that's a little thornier and
23 that we'll have to work out. But that's also a genuine
24 objection that we don't think we can shift into the other
25 corner.

1 THE COURT: Let's go back to schedule. We're not
2 arguing the whole --

3 MR. SIEGEL: No, no, no. I appreciate it. And I
4 apologize for how cryptic this document is to you, Your Honor.
5 But we have thought very hard about these things and I'm happy
6 to answer any questions, including scheduling questions, that
7 you have.

8 THE COURT: This is almost in the nit category. But
9 Mr. Princi started by saying they've already done that your
10 paragraph 2 requires.

11 MR. SIEGEL: Well, I do have a suggestion although I'm
12 not sure it's the best resolution. But we filed an objection
13 to their initial motion. One of the objections we filed is
14 that they did not do what was necessary to bring before this
15 Court the issues associated with assumption and assignment of
16 these contracts. That's our objection. We say they have not
17 said what they're doing in any detail in a way that we can
18 respond to it.

19 THE COURT: Well, they said they're going to file
20 schedules by the 31st.

21 MR. SIEGEL: Okay. So that tells us which contracts.
22 It doesn't really tell us what they're going to do with it.
23 You know, with due respect to Mr. Princi, and I do believe that
24 they've been acting in good faith trying to get us information,
25 but we didn't get an NDA signed until I think yesterday. And

1 I'm not sure that all the signatures are signed. You know, at
2 some point, when we have the stuff, we can look at it and we
3 can make a determination. But we don't want to create delay
4 while this is going on. We think it's useful to the process to
5 create some deadlines so that we can actually see the things.
6 I mean, I'm not suggesting the debtor's not proceeding in good
7 faith. But the debtor's also been proceeding and talking to
8 us --

9 THE COURT: I don't understand -- Mr. Princi says he
10 filed a motion; you filed objections to it. You've got
11 objections to the motion. But he says we've already filed the
12 motion long ago.

13 MR. SIEGEL: Well, but that's actually what I'm going
14 to suggest. If the debtor doesn't believe that our objection
15 is well taken, that they haven't properly brought this issue
16 before the Court, let's schedule a date on that objection. I'm
17 a little worried that may create some delay because if we are
18 successful and you order him to file a motion, that's going to
19 create a delay. But --

20 THE COURT: I'm not ordering anybody to file a motion.

21 MR. SIEGEL: No, no.

22 THE COURT: He says he filed a motion. If I have to
23 rule on it, I'll rule on it.

24 MR. SIEGEL: Understood.

25 THE COURT: But --

1 MR. SIEGEL: But if Your Honor were to find that our
2 objection was well taken, you would find that they had not met
3 the requirements to assume and assign the contracts. And
4 therefore --

5 THE COURT: Okay.

6 MR. SIEGEL: -- the debtor would have to do something.

7 THE COURT: Any other points that you have on the
8 schedule? Mr. Princi -- he says they did file a motion; you
9 say they didn't file a motion.

10 MR. SIEGEL: No. I understand. And --

11 THE COURT: He objects in paragraph 3 to the August
12 20th date. He says it ought to be August 14th.

13 MR. SIEGEL: I think that's not a big deal between the
14 14th and the 20th. We can work that out.

15 THE COURT: Let me see whether anybody else wants to
16 be heard. Mr. Garrity?

17 MR. GARRITY: Good morning, Your Honor. Jim Garrity
18 from Morgan Lewis on behalf of Deutsche Bank. I have one
19 question. And I just -- I don't know if I heard it correctly.
20 I think when Mr. Princi was talking to you about paragraph 2,
21 he said, well, everybody knows what we're going to do because
22 in July we announced to the Court that we're going to assume --
23 some of the debtors are going to assume and some are going to
24 reject. And we're going to file a motion in August to do that.
25 I thought that's what he said. I don't know. But if that's

1 the case, Your Honor, then we really don't have procedures and
2 your point is well taken that we need to sit down and work
3 through them. But it just strikes me that there isn't a motion
4 on the calendar now to deal with that. And I may have misheard
5 him. I may have misunderstood. And that was my only point.

6 THE COURT: Thank you, Mr. Garrity.

7 MS. BOELTER (TELEPHONICALLY): Your Honor?

8 THE COURT: Let me get people in the courtroom first
9 and then I'll make sure than anybody on the phone has a chance
10 to speak.

11 MR. WEITNAUER: Your Honor, may it please the Court.
12 I'm Kit Weitnauer from Alston & Bird. I represent Wells Fargo
13 in two capacities, if you will. One is as a trustee. And
14 you've already heard from Mr. Siegel about our concerns there.

15 But Wells Fargo also has another role in this case,
16 Your Honor, as master servicer. And as master servicer, we
17 filed a partial joinder to the submission of the RMBS trustees.
18 Now it's a partial joinder because Wells Fargo, as master
19 servicer, is dealing with a completely different set of trust.
20 They are not part of the set of trust. They're part of the
21 9019 settlement. They are not debtor-sponsored. Their trust
22 with the debtor is one of the servicers or is the servicer.
23 And these trusts, as we understand it, these servicing
24 agreements with the debtor as servicer, are part of what was to
25 be assumed and assigned as part of the sale.

1 Now the total of this other set of trust is
2 approximately 385. Okay. So in that context for those trusts,
3 Wells Fargo, as master servicer, doesn't have any role on the
4 put-back claims that may exist in those trusts. And I don't
5 know if there are or are not any valid put-back claims in those
6 trusts. But if there are, they're not part of the 9019.

7 But what's our role? As master servicer, Your Honor,
8 our role is sort of big picture. Every month, when the
9 servicer hands us the money, they collect it from the
10 mortgagees and the amounts that are required to be advanced, we
11 then take that and hand it to the institutional investors in
12 accordance with the waterfall. We're also obligated to
13 supervise the servicer's performance. And if there's a default
14 to the extent provided in the documents, take action about
15 that. So we care, in our role as master servicer, about
16 existing defaults and any assurance of adequate -- adequate
17 assurance of future performance.

18 Your Honor, we believe that the sales motion makes
19 clear that there will not be any future performance that could
20 possibly be adequate because Nationstar is not assuming an
21 obligation relating to the pre-closing period. And we don't
22 think that works in the context of a long-term agreement that
23 has continuing obligations. And it's not just indemnity. It's
24 all sorts of obligations.

25 THE COURT: Let me just -- that really doesn't bear on

1 what I'm dealing with today. I mean, you've got -- you may
2 have a valid objection.

3 MR. WEITNAUER: Right.

4 THE COURT: But it's not to the schedule.

5 MR. WEITNAUER: Well, we submit that it might be
6 important to the sales process, Your Honor, because if this is
7 resolved that Wells Fargo is right then I think Nationstar
8 would say, well, the condition to our purchase is not satisfied
9 because all we were going to pick up was stuff on and after.
10 And so, we think it's appropriate that this issue be resolved
11 before the auction.

12 THE COURT: Oh, it isn't going to get resolved today.

13 MR. WEITNAUER: I know that.

14 THE COURT: And what I'm dealing -- and with all due
15 respect, what I'm trying to deal with right now is what the
16 schedule -- you've acknowledged you're not part of the 9019.

17 MR. WEITNAUER: Not for those purposes, that's
18 correct.

19 THE COURT: And --

20 MR. WEITNAUER: That's just a claim allowance issue,
21 Your Honor.

22 THE COURT: Okay. And you've got arguments you want
23 to make. They'll be objections to the sale.

24 MR. WEITNAUER: Yes.

25 THE COURT: And when I get to the sale hearing, I'll

1 take them up.

2 MR. WEITNAUER: If that's how the Court wants to, that
3 will be fine, Your Honor. We think it would be better to have
4 it clarified in advance but we'll do what the Court says.

5 THE COURT: I'll decide the motions that are pending
6 before me on the calendar today and that's not one of them.

7 MR. WEITNAUER: That's fine.

8 THE COURT: Thank you.

9 MR. WOFFORD: Your Honor, good morning, for the
10 record, Keith Wofford from the firm of Ropes & Gray on behalf
11 of the RMBS institutional investors.

12 Your Honor, the good news is that on behalf of our
13 fourteen billion dollars nearly in certificate holders and the
14 concurring four billion represented by Mr. Franklin, your
15 remarks today have presaged most of what I was going to say
16 today. And the problem with respect to scheduling here is not
17 that the debtors have come with Schedule A and the committee of
18 trustees have come with Schedule B, but in fact the trustees as
19 you noted came with a schedule that is not a proposed schedule
20 at all. What effectively the schedule being proposed by the
21 committee and the trustees would do, Your Honor, is to take
22 away the proposed 9019 in its entirety without the opportunity
23 of the debtor or our clients to get a day in court for the
24 proposed 9019 as filed already.

25 This framework we believe is not permitted. The

1 debtors have the right to go forward with a motion. And,
2 frankly, with respect to the notion of getting in the room
3 again to try this after several weeks, I'm a little concerned
4 Your Honor. We spoke with the committee a number of times in
5 person and by the phone and, frankly, look, we've had the
6 opportunity to come with a schedule and they wouldn't come with
7 one. I think with respect to the pre-sale items, perhaps,
8 there is some more for discussion but I think with respect to
9 the fundamental gravamen of the 9019 which is the size of the
10 claim and whether the trustees agree to accept that, we do need
11 to try to set a schedule today.

12 I'm not optimistic --

13 THE COURT: The schedule isn't going to get set today
14 because what is happening today is I'm ordering that counsel
15 meet and confer beginning tomorrow morning and go day to day
16 until we have a schedule. So I'm not going to pick and choose
17 or throw darts as to a schedule. The constructs that each have
18 taken so far diverge. We're not going to put off the 9019
19 until after some future negotiation between the trustees and
20 the debtor. That isn't to say that they can't come -- the
21 parties can't come to an agreed schedule about it. I'm
22 certainly mindful of the comments you make, Mr. Wofford, with
23 respect to -- be careful what you ask for because the 9019 may
24 get heard. I'll hear evidence and the result may be it gets
25 rejected and some additional negotiation and a schedule that

1 tries to accommodate the specific needs of the trustees could
2 avoid that happening.

3 MR. WOFFORD: You are right that that could happen,
4 Your Honor, but one other thing that could happen as you are
5 certainly well aware is that the process of setting a calendar
6 date, of being able to ascertain and delineate the actual
7 objections that are on the record and having the parties have
8 the opportunity before hearing to resolve those objections, we
9 would suggest might have the same effect on a quicker timeline.

10 THE COURT: Well, we're going -- whatever schedule is
11 agreed to or that I have to resolve because the parties can't
12 will -- needs to include specific dates for objections,
13 hearings, discovery, et cetera. We're not going to come back
14 in mid-November and talk about a new scheduling order. So this
15 needs to be a comprehensive schedule that includes whatever
16 matters -- either the motion, the 9019 that's been filed or
17 that the trustees intend to file. I didn't press Mr. Siegel
18 about what the trustees want to do to see if this Court can
19 resolve issues that could take five years in the state court to
20 resolve. That's not the issue for today. But an important
21 issue from the trustee's standpoint, important issue for the
22 investors and for the debtor and the committee. I mean it's
23 obviously important in being able to put a schedule together
24 that would have hearings, that would give parties a chance to
25 try and resolve these issues if they can, but at the end of the

1 process, we'll give everybody certainty and people can feel --
2 can do what they want but at least we'll provide all of these
3 moving parts some certainty about what the outcome is.

4 So I hear what you're saying but if you need to be a
5 part of the scheduling, the face-to-face meeting on scheduling,
6 that's fine, go ahead and do it but starting tomorrow morning.

7 MR. WOFFORD: Your Honor, that we take that into
8 account but with one question because one thing that we need is
9 not just a start point but an end point. Because even though
10 the last conference --

11 THE COURT: The schedule is going to include start and
12 end.

13 MR. WOFFORD: But I mean in terms of actually arriving
14 with a schedule. Because one concern that we have, Your Honor,
15 is that one of the arguments that will be made if a schedule is
16 not agreed to is that as time continues to lapse, there isn't X
17 time remaining before a sale.

18 THE COURT: I don't allow things to linger. So the
19 schedule will be set -- I'm just not satisfied that the parties
20 are meeting face-to-face tried to resolve those issues
21 themselves. And that's what needs to happen.

22 MR. WOFFORD: Okay. Your Honor, certainly with -- in
23 conjunction with the debtors and the committee, we'd love to
24 hear any thoughts on alternative dates to set that new schedule
25 because we are concerned.

1 THE COURT: You're not going to do it here -- we're
2 not going to do it in court now. Okay?

3 MR. WOFFORD: Okay.

4 THE COURT: Anybody else?

5 MS. BOELTER: Jessica Boelter of Sidley Austin on
6 behalf of Nationstar Mortgage, Your Honor.

7 I raise -- I rise for a very limited purpose and that
8 is simply to point something out with respect to paragraph 4 of
9 the proposed order by the UCC and the RMBS trustees. It's my
10 understanding of the papers that were filed by the UCC and the
11 trustees that they were intending to bifurcate issues that a
12 potential purchaser of the assets would care about to the pre-
13 auction period and let issues that perhaps only the debtor and
14 their estates would care about to the post-sale period.

15 And if you look at paragraph 4 of their proposed order
16 it says, "Except as to the pre-auction objections, all
17 objections and cure claims of the RMBS trustees in connection
18 with the sale motion are reserved notwithstanding the entry of
19 any order entered in connection with the sale motion."

20 Now, the pre-auction objections that define term as I
21 understand it is principally limited to issues like severing,
22 the RMBS inventory, the enforceability of various origination
23 provisions, but there are, of course, a lot of other objections
24 that the RMBS trustees could assert to the sale. And the
25 assignment of contracts to Nationstar or any other purchaser

1 such as adequate assurance of future performance whether the
2 bid was the highest and best, good faith of the purchaser. And
3 from our perspective and my guess is Your Honor doesn't want to
4 hear about those things --

5 THE COURT: Look, highest and best is going to get
6 resolved in a sale hearing.

7 MS. BOELTER: Right.

8 THE COURT: I mean that -- but this would be the rare
9 case where the cure objections aren't deferred until after the
10 sale and you get your chance if you're -- if Nationstar is a
11 successful bidder for the servicing platform, it will no doubt
12 negotiate with those who have cure objections to see whether
13 they can resolve them. And if they can't, it has to be a
14 hearing to resolve the cure objections, there will. And at
15 some point Nationstar will just say nope, we're going to reject
16 that. I'm not going to take that. I don't want to assume that
17 contract. That's what always happens. Why is this different?

18 MS. BOELTER: Again, in this case, Your Honor, the
19 only thing that concerns me is they're saying all objections to
20 the sale that are asserted by the RMBS trustees shall be
21 reserved notwithstanding the entry of an order approving a
22 sale. And so, there are certain things that we think have to
23 be resolved at the sale hearing.

24 THE COURT: I think you make a good point. It's part
25 of the problem I have with this order in general that I don't

1 read the tea leaves well and I'm not sure what -- I don't want
2 to find out three months from now that somebody had some
3 different intention about it. So when the parties meet and
4 confer and try to resolve it, clarity, I think is the most
5 important point.

6 MS. BOELTER: Thank you, Your Honor.

7 THE COURT: Thank you very much, Ms. Boelter.

8 Anybody else wish to be heard?

9 MR. SHORE: Good morning, Your Honor. Chris Shore
10 from White & Case on behalf of the junior secured notes.
11 They're holding a 900 million dollars in claims now with liens
12 on substantially all of the debtors' assets. I'm also focusing
13 on paragraph 4, the language at the end which I don't think
14 works and I'm happy to talk to people about the language. But
15 we can't have this order resolved in priority issues in
16 connection with the scheduling of sale objections. So on the
17 record I'd add that if and to the extent anybody wants to put
18 in the scheduling order something that addresses priority
19 issues that they loop me in and we'll talk to them about it and
20 if we can resolve any objections we will and if not we'll come
21 back and address it when the scheduling orders up.

22 THE COURT: Thank you very much, Mr. Shore.

23 Anybody else wish to be heard? Anybody on the phone?
24 Mr. Princi?

25 MR. PRINCI: First of all, Your Honor, I look forward

1 to hopefully resolving this. We should be able to resolve
2 this. There's no reason why we shouldn't come to an agreement.

3 THE COURT: Would you like everybody to meet in your
4 office starting tomorrow morning?

5 MR. PRINCI: 10 o'clock.

6 THE COURT: Okay. Beginning 10 o'clock at the
7 Morrison & Foerster officer, those who wish to be heard with
8 respect to the scheduling order.

9 MR. PRINCI: Please.

10 THE COURT: Talk to Mr. Princi after that's when --
11 when we start. I'm serious about this. We go day to day until
12 you finish it.

13 MR. PRINCI: I'm --

14 THE COURT: And you can't -- what I want to get is I
15 want to get one -- I can understand you may not be able to
16 resolve all the issues but you ought to be able to agree on at
17 least a format and what the format -- and maybe you think that
18 paragraph 4(c) should say this and the trustees think that 4(c)
19 should say that and indicate what those positions are. And
20 then, if it comes to that, I'll permit letter briefs that just
21 address indifferences. And I'm not going to put a page limit
22 on long or short. Okay. Just simultaneously file -- and work
23 it out. The faster this gets resolved the better it gets
24 resolved.

25 So try and iron out a common schedule. If you intend

1 to disagree, flag those issues. Short letter briefs addressing
2 those. Mr. Shore's point about a scheduling order is a
3 scheduling order. You can't resolve issues about priority.
4 You can't -- it shouldn't have some very vague position that
5 all objections -- there are certain objections that really do a
6 sale process to be effective on. The buyers need to know what
7 they're bidding on. So if there are objections -- many
8 objections frequently don't get resolved until after a sale.

9 Adequate assurance, until you know who the successful
10 bidder is, how do you ever know whether there was adequate
11 assurance?

12 (Pause)

13 THE COURT: I'm going to set the scheduling conference
14 for Tuesday, August 7th at 9 a.m. So by 5 p.m. Wednesday,
15 August 1st I want to propose a scheduling order reflected to --
16 and hopefully you'll all agree. To the extent you don't I show
17 the competing paragraphs and I want that same deadline for
18 letters that just address the issues that are in dispute. I
19 don't need lengthy arguments about why.

20 MR. PRINCI: Your Honor, may I ask the Court to
21 reconsider those dates for the following reasons? I think you
22 had it right earlier when you said go in a room, go day to day,
23 get it done. I mean, Judge, I just don't believe that there is
24 any reason why we should not be able to get a schedule
25 completed by going tomorrow in the same room, Thursday in the

1 same room. What I'm concerned about, Judge, if you give people
2 to August 1 it's going to be -- it's going, if you will, serve
3 to -- we have a greater incentive, Judge. I think if you stay
4 with your earlier direction than providing August 1 and then,
5 providing a date where there's a scheduling conference.

6 THE COURT: Well, I'm on an airplane then, July 31st.
7 And --

8 MR. PRINCI: So why don't we get it done by the 30th,
9 Judge?

10 THE COURT: Well, believe or not, I actually have
11 other things on my calendar.

12 MR. PRINCI: Sorry about that.

13 Would it be possible, Judge, that we set an earlier --

14 THE COURT: Stop. Stop.

15 MR. PRINCI: It's okay.

16 THE COURT: Okay. I will address the scheduling.

17 I want to schedule an order by this Friday at noon,
18 July 27th at noon. I want letters addressing all the
19 differences by Sunday the 29th at noon. And we'll have a
20 conference on Monday, July 30th, 3 o'clock. I'm on an airplane
21 the next morning.

22 MR. PRINCI: Your Honor, thank you very much for your
23 consideration and for moving your calendar like that. We
24 appreciate it.

25 THE COURT: Okay. Mr. Lee, what are we going -- what

1 do we have to cover today and then we'll decide how we're going
2 to deal with it?

3 MR. LEE: Give me one second.

4 Your Honor, the next thing on the agenda would be the
5 long delayed promise that Mr. Eckstein and I have made to the
6 Court to actually explain what's at issue in relation to the
7 subservicing motion. I would hope that we'll be able to
8 address that fairly quickly.

9 THE COURT: Okay.

10 MR. LEE: Thereafter, Your Honor, we have a reduced
11 number of contested stay relief motions and then a few
12 professional applications which I think we should be able to
13 address fairly quickly as well.

14 THE COURT: All right. Here's -- I need a short
15 break. Let's take a ten minute recess and I'll come back in.
16 Okay?

17 MR. LEE: Thank you, Your Honor.

18 THE COURT: Everybody can remain seated when I come
19 back in.

20 (Recess from 11:56 a.m. to 12:15 p.m.)

21 THE COURT: Okay. We're back on the record in
22 Residential Capital No. 12-12020. Mr. Lee?

23 MR. LEE: Good afternoon, Your Honor. Gary Lee from
24 Morrison & Foerster for the debtors.

25 The next item on the agenda is the status conference

1 on the debtors' motion for a final order approving the
2 servicing agreement between GMAC Mortgage and its nondebtor
3 affiliate Ally Bank. That's the agreement under which the
4 debtors provide subservicing for, I think, about 690,000 of
5 Ally Bank's loans.

6 Your Honor, before I provide a report on the
7 outstanding issues and the debtors', the committee's and AFI's
8 efforts to resolve them, I'd like to put this motion into
9 context as Mr. Eckstein and I both suggested we would need to
10 do when we were last here.

11 As Your Honor is aware, the debtors are seeking to
12 complete the sale of a mortgage servicing business, an
13 origination business in bankruptcy. And as I think we've said
14 from the outset, the success of that endeavor depends in large
15 measure on the continued support and cooperation of the various
16 governmental entities that are parties-in-interest in this
17 case. And that support is contingent, really, on one thing
18 which is the continued performance by the debtors of their
19 obligations under the DOJ/AG settlement and the consent toward
20 it issued by the Fed.

21 And the servicing agreement, Your Honor, in our view
22 and I think the committee shares this view, it's a major
23 component of the means by which the debtors are complying with
24 the DOJ/AG settlement. It is, in fact, Your Honor, the vehicle
25 by which the debtors are able to comply with the soft dollar

1 component of the settlement and creditor compliance and also is
2 part of parcel of the way in which the debtors are meeting the
3 hard servicing standards that they're required to comply with.

4 It is also, Your Honor, one of an integrated series of
5 agreements between the debtors on the one hand, AFI and Ally
6 Bank on the other which allow us to continue service loans and
7 to originate new loans during the bankruptcy. And I think when
8 I -- we've made this point before, Your Honor, those agreements
9 and the support that Ally is providing are a significant driver
10 of value in relation to the asset sale and indeed they're
11 significant driver of the income ResCap generates during this
12 case. Without the ability to originate that Ally Bank provides
13 to us, it would be a significant loss of income to ResCap
14 during this case in the order of tens of millions of dollars.

15 So as I mentioned earlier this morning, Your Honor,
16 AFI is doing what it committed to do at least under those
17 agreements and under the DIP and that was why, Your Honor, I
18 mentioned that we had committed to file a plan in the coming
19 weeks, in fact, in August so that we would at least comply with
20 some of the milestones in this case.

21 Now, turning to the servicing agreement specifically,
22 the committee has raised concerns regarding indemnification
23 payments paid by the debtors to Ally Bank pursuant to the
24 servicing agreement.

25 Our understanding of the committee's view is that AFI

1 should have made these payments to the bank as opposed to the
2 debtors. And one point, and this needs to be very clear for
3 the record, absolutely everybody agrees the bank should be
4 paid. The payments are due and owing. What was paid should
5 have been paid. And in our view, the payments that we've made
6 to date post-petition which are just under twenty million
7 dollars, were required by not just the servicing agreement but
8 they are part and parcel of the cost of complying with the
9 DOG/AG settlement.

10 Now, in addition to a difference of use with the
11 committee on payments made to date, there's also a difference
12 of opinion as between the debtors, the committee, AFI and the
13 bank as to the obligation to make future payments.

14 We have argued to AFI and the bank that the
15 requirement to make further payments under the servicing
16 agreement is capped once the debtors have obtained 200 million
17 dollars in soft dollar credits under the DOJ/AG settlement.
18 And because of the very efficient way in which the debtors went
19 about modifying Ally Bank's book, we believe that that
20 threshold has, in fact, been met and we have argued to AFI that
21 we believe that further payments are its obligation. AFI
22 disagrees with us as does the bank. And in that regard, last
23 Thursday we received a letter from the bank advising us that
24 the failure to make payments that are now due and owing of
25 about five million dollars are an event of default under the

1 agreement. So the issue is very bright now.

2 Because of the significance of this agreement, we've
3 been working very hard to bridge the gap between the parties
4 and bring about a resolution of these issues. And I think
5 that's demonstrated by the fact, Your Honor, that we have one
6 disagreement with the committee and another disagreement with
7 AFI and the bank. We are trying to bridge the difference very
8 hard. And everybody understands that these issues really need
9 to be resolved in order to conduct an orderly sale.

10 So as a result of those negotiations, we have
11 tentatively agreed to terms that were spelled out in the
12 supplemental declaration that was filed by the CEO of ResCap,
13 Mr. Marano, and I believe that was filed last Monday.

14 Now, we believe that the proposed compromise is
15 reasonable particularly in light of the importance of the
16 agreement. And particularly in light of the potential
17 consequences that might arise if ResCap lost the ability to
18 service the Ally Bank loan portfolio. Now, I want to caution
19 that nobody has made a threat that that will happen but clearly
20 the bank which is regulated by the FDIC has whatever rights it
21 has.

22 And Mr. Marano described, I think in some clear detail
23 what the potential consequences are if the servicing agreement
24 is not approved. And I believe, and we've had this discussion
25 several times with the committee, they agree that approval of

1 the servicing agreement is critical. Where the dispute lies,
2 Your Honor, is in relation to the compromise and the
3 indemnification payments. So at the end of the day, everybody
4 understands that what we need to have is an approved servicing
5 agreement. The dispute is over the indemnity. So we will
6 continue to work with the committee, AFI and the bank to
7 address their concerns.

8 Your Honor, if our efforts are unsuccessful to bring
9 everybody to agreement and the hearing on the servicing motion
10 proceeds on a contested basis, we will argue, Your Honor, that
11 performance under the servicing agreement on the terms that Mr.
12 Marano spelled out in his declaration, and that's assuming that
13 AFI agrees to those terms because they are tentative, is a
14 reasonable exercise of the debtors' business judgment are
15 necessary to ensure the asset sale remains on track.

16 The committee served us with informal discovery on
17 July the 6th. We provided them with documents both before July
18 the 6th. We're providing them with documents after July the
19 6th and there really is no issue in terms of the speed with
20 which discovery is ongoing. And depositions, we understand,
21 will need to be taken.

22 As for witnesses, the key witness if there's an
23 evidentiary hearing will be Mr. Marano, Mr. Detweiler who's the
24 head of the subservicing operation --

25 THE COURT: This would come up as a 9019? How -- in

1 what warm or fashion would it be presented to the Court?

2 MR. LEE: I believe, Your Honor, the way that it's
3 contemplated, and as I said, the resolution as between ResCap
4 and AFI is a tentative and be recent is that it would be
5 subject to an appropriate modification of the terms of the
6 servicing agreement. So fundamentally, the servicing agreement
7 in a term X (ph.) requires ResCap to make certain
8 indemnification provisions. And there is a dispute between us
9 and AFI as to how those indemnification provisions work and
10 between the committee. So the simplest form, I think, rather
11 than in terms of a settlement to see --

12 THE COURT: Is this a 363 motion? Is it --

13 MR. LEE: Well, it's a motion to assume the servicing
14 agreements. That theoretically one could just simply modify
15 the terms of the agreement on terms that the parties agree. Or
16 alternatively, Your Honor, might simply rule that the terms of
17 the agreement are X, Y and Z and the indemnification --

18 THE COURT: I'm just trying to understand how this is
19 going to come before me if you don't resolve it.

20 MR. LEE: It'll come before Your Honor in an
21 evidentiary hearing on the terms of the servicing agreement and
22 what the servicing agreement and the other related agreements
23 require in terms of indemnification.

24 THE COURT: The reason I keep asking in the context is
25 because obviously a different standard may apply depending in

1 what form it comes before the Court. There's a pending motion
2 to approve the subservicing agreement. Now, you're talking
3 about amending or modifying the agreement. Do I understand
4 that correctly?

5 MR. LEE: Modifying --

6 THE COURT: There's an existing agreement.

7 MR. LEE: Yes, Your Honor.

8 THE COURT: And assuming the debtor reaches an
9 agreement, at least, with AFI and the bank and contemplate an
10 amendment to the existing servicing agreement.

11 MR. LEE: That is my view, Your Honor, but I haven't
12 had that discussion with AFI. As I said, AFI's position is
13 that the agreement that was reached with the -- between ResCap
14 and AFI is tentative subject to documentation and my
15 contemplation is that the easiest way to do that is by an
16 amendment to the servicing agreement to spell out in the
17 servicing agreement which is the agreement between Ally Bank
18 and ResCap precisely where the indemnification obligations lie.

19 Ally Bank is not a party to the DOJ settlement
20 agreement. So, therefore, what our position is it should be
21 irrelevant to the bank who pays it as long as somebody pays it
22 and there is a difference of view as to who has the obligation.
23 Our view is that the compromise that's been proposed is an
24 acceptable one from a business perspective.

25 THE COURT: Okay.

1 MR. LEE: So I think, Your Honor, we will work with
2 the committee and with AFI to try to narrow the issues in the
3 event that evidentiary hearing is required. I think, Your
4 Honor, we had spoken at the last hearing with some dates. I
5 think Your Honor had suggested August the 14th. I might be
6 misremembering.

7 THE COURT: I have a very full ResCap calendar for
8 August 14th. I don't know what -- there's a lot of stay relief
9 the motions which are all important. It fills most of the page
10 on my computer screen just looking at the list of matters on
11 the calendar. I'm not saying that this shouldn't be heard on
12 that day.

13 MR. LEE: The reason why I think Your Honor will
14 recall why we wanted to have it heard in August was because if
15 the agreement's not approved then the existing agreement by its
16 terms effectively expires. And the FDIC required Ally Bank to
17 effectively put the agreement out for bid. And we, obviously,
18 ultimately ended up having the right to continue to subservice
19 the book.

20 What we don't want to do, Your Honor, is be in a
21 situation in which the agreement has expired by its terms which
22 is in effect what will happen.

23 THE COURT: You need to remind me again because I
24 really am drawing a blank. Was there an agreed schedule for
25 discovery, briefing, filings assuming hearing in AU --

1 contested hearing on August 14th or not? I'm drawing a
2 complete blank.

3 MR. LEE: Your Honor, it has been the subject of
4 discussion between ourselves and the committee but we haven't
5 submitted anything to the Court. And again, I think what we --
6 what Your Honor asks us to do at the last hearing was to report
7 back. We would then hear from Your Honor whether or not there
8 had been a couple -- there'd been a suggestion of an earlier
9 date in August but Your Honor had said that really isn't going
10 to work. I think I want to do this on August the 14th. Come
11 back and tell me whether or not you've reached a resolution.
12 If you haven't, I'll set it for August the 14th and then once
13 you've done that, we will submit an order -- a scheduling
14 order, Your Honor.

15 THE COURT: Mr. Eckstein, you want to --

16 MR. ECKSTEIN: Your Honor, good morning. Kenneth
17 Eckstein of Kramer Levin.

18 THE COURT: We made it into the afternoon.

19 MR. ECKSTEIN: I made it into the afternoon. I did
20 notice.

21 Your Honor, before --

22 THE COURT: All on scheduling it seems.

23 MR. ECKSTEIN: All on scheduling, yes.

24 Before plunging into discovery schedules, I think it
25 would be useful to try to put this motion into context. I know

1 we've actually adjourned this motion on several occasions now
2 in an attempt to see whether or not this matter could be
3 resolved and I will assure Your Honor that last week was
4 occupied by almost an entire week of in-person meetings.
5 Tuesday, a full committee met with senior management from
6 ResCap about this subject among others. On Wednesday,
7 representatives of the committee met with the senior executives
8 of Ally Bank. And on Thursday, representatives of the
9 committee met with senior executives of AFI. And so, there was
10 extensive in-person discussions and a time between the
11 adjourned hearing a week ago Thursday and today I thought was
12 put to extremely useful use in terms of the parties making
13 very, very serious in-person efforts to try to reach an
14 agreement.

15 I think it's -- I guess it's probably apparent to Your
16 Honor that we're not announcing an agreement today. I'd like
17 to just put it into context briefly if I may and then we can
18 talk about maybe what the most sensible way is to proceed.

19 THE COURT: As I understand it, since the petition
20 date the debtors have paid twenty million dollars in
21 indemnification payments?

22 MR. ECKSTEIN: That's correct, Your Honor.

23 ResCap or GMAC Mortgage has been providing
24 subservicing to the Ally Bank mortgage portfolio going back to
25 2001. And the terms of that arrangement, at least pre-petition

1 had been supplemented by a swap arrangement that provided some
2 compensation to ResCap in connection with the servicing and
3 that swap would be terminated prior to the commencement of the
4 case. ResCap, AFI and Ally Bank all felt that it made sense to
5 continue the servicing during the bankruptcy case so that the
6 platform essentially could be maintained in the ordinary course
7 while the platform was being sold. And toward that end, they
8 agreed to apparently proceed with an amended servicing
9 agreement.

10 Mr. Lee mentioned Ally Bank in an attempt to ensure
11 that there was an arm's length relationship between Ally Bank
12 and ResCap, insisted that before entering into an amended
13 agreement that the terms of an agreement be put out for bid to
14 third parties. And apparently, the -- an RFP was put together.
15 It was given out to -- we're told twelve potential servicing
16 entities. Six parties came back with proposals. There were
17 three contracts and ultimately the ResCap proposal was -- was
18 accepted. And we're told that ResCap was viewed as a good
19 servicer. And there were 700,000 mortgages and sort of made
20 business sense that if ResCap was doing a good job servicing
21 and as long as we had market terms in order to deal with the
22 servicing for the next several months until a sale got
23 concluded that it makes sense for everybody; ResCap and AFI and
24 Ally Bank to maintain the status quo.

25 And we understand that a contract was entered into on

1 May 11th, three days before the bankruptcy for an amended
2 servicing arrangement and that was the subject of a motion that
3 was filed on the first day of the case and Judge Peck heard a
4 presentation with respect to the amended servicing motion and
5 the Court was told that it was business as usual and the terms
6 of the amended servicing arrangement were laid out in the
7 motion. They were three pages single spaced laying out the
8 services and the compensation and the events of default and the
9 termination and it looked like a servicing motion. And we were
10 told that it was on market terms. And that was what we knew.
11 And it was approved. And it was set down for a final hearing
12 on June 18th.

13 The motion did not make any reference, Your Honor, to
14 indemnity payments and that was troubling to us and it is
15 troubling to us right now. And as Your Honor pointed out that,
16 in fact, as a result of the motion, following the entry of the
17 interim order, 19.9 million dollars was paid by ResCap in
18 respect of an indemnity obligation that ResCap and AFI jointly
19 had entered into with Ally Bank in January of 2012 with respect
20 to the DOJ attorney general settlement. It's a complicated
21 settlement. They're complicated obligation. But when it's
22 boiled down to its essence, there was an agreement between AFI,
23 ResCap and Ally Bank that provided for reimbursement payments
24 and releases of debt and extensions of credit and a whole
25 series of undertakings that were not part of the servicing. It

1 was a separate standalone agreement that was entered into pre-
2 petition where you had joint obligations by ResCap and AFI to
3 reimburse Ally Bank. And there's discussions about whether it
4 was capped at 200 million dollars or not although what we now
5 understand is that everybody seems to agree that number one,
6 ResCap is in full compliance with the DOJ settlement, which is
7 important. And number two, that, in fact, as of the petition
8 date, ResCap had satisfied between cash payments and soft
9 credits the 200 million dollar obligation that it was obligated
10 to pay under the DOJ settlement.

11 Now, if this motion was simply about whether or not
12 the terms of the servicing that were amended and built into the
13 motion were appropriate and whether it made business sense for
14 ResCap to continue to service Ally Bank's loan between now and
15 the closing of a sale, I don't think we would have had three
16 adjournments. I don't think we would have a lot of discussion.
17 It makes business sense. We understand that. And while I
18 can't represent to Your Honor that we know for certain that
19 it's on market terms, we're told that if there was an RFP and
20 there was bidding and that ResCap's proposal is within the
21 range of market terms and that seems to make a lot of sense.
22 And the committee is supportive of the servicing continuing
23 between now and the closing. We all agree on that. We have a
24 problem.

25 THE COURT: Did the RFP cover require

1 indemnification --

2 MR. ECKSTEIN: We don't -- I don't believe so, Your
3 Honor, no. I don't believe the indemnification has anything to
4 do with servicing.

5 What happened was that the servicing was used as a
6 vehicle to fold in the pre-petition indemnification
7 arrangements that existed between ResCap, AFI and Ally Bank and
8 that is the nub of the problem.

9 Pre-petition in March or April of 2012, ResCap paid
10 forty-eight million dollars in respect of this indemnity.
11 Post-petition, ResCap has paid 19.9 million dollars in respect
12 of this pre-petition indemnification. As Your Honor heard,
13 there's a five million dollar bill that is outstanding for
14 June. And, in fact, since it is still outstanding last week,
15 AFI -- Ally Bank delivered a notice of default under this
16 amended servicing agreement on the ground that they are
17 entitled to be reimbursed for the -- essentially the costs of
18 the modification.

19 THE COURT: If the indemnification obligation didn't
20 exist pre-petition in the servicing agreement, where did it
21 arise from?

22 MR. ECKSTEIN: It arose from a June -- January 30
23 letter agreement entered into between ResCap and AFI and Ally
24 Bank. And they were pre-existing indemnity agreements that ran
25 between AFI and Ally Bank in connection with servicing but the

1 indemnity with respect to the -- with respect to the DOJ
2 payments arose out of a January 30th, letter.

3 By rights, if it was appropriate and it made sense to
4 assume the January 30th, letter, a motion could be made to
5 assume the January 30th letter and there'd be a hearing on
6 whether or not we should assume the January 30 letter and on
7 what terms. And that's -- part of the problem is that motion
8 is not pending. Instead, it was folded into the servicing
9 agreement and essentially as a toll for the privilege of it
10 continuing to service on market terms, we essentially have
11 learned that what is necessary is that ResCap has to pay what
12 looks like it could be in excess of hundred million dollars of
13 cash to Ally Bank and it could be more if there are further
14 modifications essentially as a toll for having the privilege of
15 continuing to do what they've been doing in the ordinary course
16 of business now on market terms.

17 THE COURT: Did the January 30 letter tie it into any
18 other agreements between the parties?

19 MR. ECKSTEIN: Your Honor, I wouldn't even pretend to
20 try to answer that with certainty. But it was a standalone
21 agreement. It was related to the DOJ settlement. I'm not
22 aware that it didn't tie into anything else that I'm aware of,
23 Your Honor.

24 But now in the amended servicing agreement, the
25 amended servicing agreement references -- references the DOJ

1 settlement and it essentially says that ResCap has to pay all
2 essentially costs of modification.

3 Now, as an aside, it's interesting from a business
4 standpoint, what are the modifications really mean? Basically,
5 you have a pool of mortgages that Ally Bank originated. The
6 mortgages have problems and they're not worth their face,
7 necessarily. ResCap goes ahead and modifies the mortgages
8 usually by writing down the face or changing the terms. And
9 so, essentially a mortgage with a one hundred dollar face is
10 modified down to seventy dollars, let's say. And so, what does
11 it mean? What does the indemnity mean? It means that ResCap
12 goes out and modifies the mortgage. It goes from a hundred to
13 seventy which is probably fair market value for the mortgage.
14 The mortgage is actually cleaned up and improved and then
15 ResCap has to turn around and write a check to Ally Bank for
16 thirty cash dollars on an administrative basis to reimburse
17 Ally Bank which is owned by AFI, of course, for the difference
18 between what the face amount of the mortgage was and what the
19 real fair market value is.

20 Whether that makes business sense or not, Your Honor,
21 I don't know. And that's not something that I want to deal
22 with today and I don't think anybody wants to deal with that
23 today but that was the agreement that was reached.

24 And the fact that AFI is jointly obligated to pay
25 those indemnities is interesting and important and is something

1 that we, frankly, think should be dealt with in connection with
2 a plan. That's a pre --

3 THE COURT: I understand -- curiosity is the January
4 30th letter or the amended loan servicing agreement is subject
5 of the examiner's investigation?

6 MR. ECKSTEIN: I have no doubt the examiner will look
7 closely at the January 30 letter and will look at all the
8 negotiations surrounding the January 30 letter and the payments
9 that were made prior to. The January letter -- the January 30
10 letter was a fascinating letter because it contemplated the
11 bankruptcy file, it contemplates DIP financing, and it
12 contemplates an entire sequence of events that are now playing
13 out and it was contemplated very carefully at least as far back
14 as January and I'm sure before January.

15 But again, it's -- the problem we have, and I'm going
16 to be honest, the problem that we have is we've tried to
17 resolve this because we agree it is a good thing for ResCap and
18 we think for AFI to maintain the status quo and for ResCap to
19 continue to service 700,000 mortgages that are currently part
20 of their servicing platform between now and the closing. And
21 it's a one year contract and there's no guarantee that AFI and
22 Ally Bank will continue to stay with the purchaser but it
23 essentially gives the purchaser and AFI post-closing the
24 ability to decide --

25 THE COURT: What happens to the indemnification

1 obligation post-sale?

2 MR. ECKSTEIN: Post-sale, ResCap no longer has a new
3 liability. And AFI is obligated independently on the indemnity
4 and AFI and Ally Bank I'm sure we'll figure out a way to work
5 that out.

6 THE COURT: So what discovery have you taken to date?

7 MR. ECKSTEIN: Look, Your Honor, the problem is we
8 have --

9 THE COURT: August 14th is going to be here before you
10 know it.

11 MR. ECKSTEIN: Correct. Everything is here before we
12 know it.

13 And we have -- as Mr. Lee indicated, we served the
14 debtor with document requests. We had asked for e-mails and
15 the debtor has not yet provided e-mails. We provided them
16 search terms and I take from Mr. Lee's comment that they will
17 find a way to provide us with the e-mails as to the facts
18 surrounding all these events. There are a lot of facts.

19 THE COURT: What's your discovery cutoff date?

20 MR. ECKSTEIN: We have not yet taken depositions, Your
21 Honor, because we held off. If we're going to have a--

22 THE COURT: What should be the discovery cutoff?
23 Because I -- what's going to happen, August 14th is really just
24 around the corner and as you know from this and other matters
25 if I have to have a contested evidentiary hearing, I'm going to

1 have everything well in advance of that hearing, direct
2 testimony, written narrative form, deposition designations,
3 counter designations, exhibits, objections, the full package, I
4 generally want it a week before, August 7th, okay. That's
5 really close. So I care most about that August 7th date and
6 everything else to that point is what's going to make all of
7 your lives miserable. But you can't wait much longer to
8 have -- whether you call it a contingency plan in mind that,
9 okay, here's the schedule. I don't -- what I don't want to
10 hear come August 7th well, we need to move that date another
11 four days because we're continuing to discuss and maybe we'll
12 have an agreement and then, I don't have the stuff, and I don't
13 feel I'm prepared for a contested hearing; and that's what I
14 insist on doing.

15 So what you all need to do is by Thursday, I want an
16 agreed order on a schedule. Is your view that it needs to go
17 forward on August 14th?

18 MR. ECKSTEIN: No, Your Honor. I mean the problem --
19 there are two problems and I'm not belittling AFI's issues but
20 AFI has a deadline in the DIP and AFI feels as if they keep
21 pushing the deadline out and they don't like to push the
22 deadline out.

23 THE COURT: Well, you've known about the deadline,
24 though.

25 MR. ECKSTEIN: But we can't -- it's not in my control,

1 Your Honor. So I'm dealing with --

2 THE COURT: It is. It's in your control to say we
3 don't agree; we're going forward with a contested hearing.
4 Yes?

5 MR. ECKSTEIN: That's what we're prepared to do.

6 THE COURT: Okay.

7 MR. ECKSTEIN: So -- but I don't need to go forward.
8 I'm saying we're going forward because that's the deadline.

9 The other deadline is there's a five million dollar
10 bill out there which Ally Bank wants to be paid. We agree Ally
11 Bank should be paid and there's an issue whether it should be
12 paid by ResCap or AFI and that -- that right now is not
13 resolved and that's putting some pressure right now on the
14 issue.

15 Your Honor, we'll be prepared to go forward on August
16 14th and we'll finish the -- we'll submit our papers --

17 THE COURT: No, you're prepared to submit -- that both
18 sides will submit declarations for direct expected -- for the
19 direct testimony. Declarants will be present in court for
20 cross-examination. If you're going to submit any deposition
21 designations and counter-designations I want those by August
22 7th as well. I want briefs of each side by August 7th. And
23 I'm going to leave it in the first instance to you and Mr. Lee
24 to work out what dates you need to agree on to get to those
25 dates.

1 I hope you settle it. If you can't, we'll have to go
2 forward. I understand that.

3 MR. ECKSTEIN: If I may suggest, Your Honor, rather
4 than burden Your Honor with the calendar right this moment, let
5 me and Mr. Lee or our colleagues try to work out a schedule
6 over the next two days and come back to Your Honor with the
7 schedule for how we would complete discovery and submit the
8 unnecessary materials contemplating an August 14th hearing.

9 THE COURT: Okay. Fair enough.

10 MR. ECKSTEIN: Thank you, Your Honor.

11 THE COURT: Let's be -- before you sit down, let's --
12 we have a call on Thursday at 2 o'clock, a telephone call, just
13 to see where you are on the schedule.

14 MR. ECKSTEIN: On --

15 THE COURT: This Thursday.

16 MR. ECKSTEIN: -- on this issue?

17 THE COURT: On this issue.

18 MR. ECKSTEIN: Thursday at 2?

19 THE COURT: Yes.

20 MR. ECKSTEIN: That's fine. That -- we can do that.
21 I think we can -- by then, we'll be -- we'll have worked out
22 the schedule.

23 THE COURT: Just let my -- one of my law clerks know a
24 call-in number.

25 MR. ECKSTEIN: That's fine.

1 THE COURT: Hold on. What do we have then?

2 (Off the record)

3 THE COURT: 1 o'clock.

4 MR. ECKSTEIN: Thursday at 1?

5 THE COURT: Thursday at 1. I have a 2 o'clock.

6 MR. ECKSTEIN: Okay. Thank you, Your Honor.

7 THE COURT: Okay? Thank you.

8 Now, Mr. Lee, really briefly. And then, I got to
9 figure out what we have left because I want to take a lunch
10 break.

11 MR. LEE: Your Honor, just a couple of things by way
12 of clarification.

13 First of all, the -- I think Mr. -- counsel to the
14 committee suggested that we've actually satisfied the
15 requirement to obtain 200 million dollars in borrower relief
16 credits as of the petition date. That is, in fact, incorrect.
17 We hadn't -- well, no, but that's --

18 THE COURT: I don't want to get into the merits of it.
19 I just -- it is -- either you did or you didn't and --

20 MR. LEE: But it -- just for -- there's a declaration
21 that sets out from Mr. Marano the time and I just don't want
22 the record or the transcript to --

23 THE COURT: You don't agree to.

24 MR. LEE: -- thank you, Your Honor.

25 THE COURT: All right. What is it that we need to

1 cover. I'm trying to --

2 MR. CORDARO: Your Honor, may I be heard on this just
3 briefly?

4 THE COURT: Go ahead.

5 MR. CORDARO: Thank you, Your Honor. Joseph Cordaro,
6 Assistant United States Attorney appearing on behalf of the
7 United States of America. And I just want to briefly point out
8 an issue of concern that the United States has with the Marano
9 declaration and we're still reviewing it. It's rather complex
10 and there are a lot of complex exhibits to it.

11 But the solicitation and modification aspects of the
12 DOJ/AG settlement, of course, are a key component of the
13 borrower relief that's contemplated in that settlement. And
14 there was a statement in the Marano affidavit to the effect
15 that solicitations on the Ally book have been suspended I
16 assume pending these negotiations. It was in paragraph 18 of
17 that declaration.

18 THE COURT: I haven't read the declaration.

19 MR. CORDARO: Okay. And again, there's a lot of
20 complex things going on here so we're reviewing it and, of
21 course, the government's position is regardless of whether that
22 200,000 dollar cap --

23 THE COURT: I think it's 200 million --

24 MR. CORDARO: -- 200 million dollars -- excuse me --
25 cap has been met, the solicitations under the DOJ/AG settlement

1 should continue as -- and the modifications. They're bonded
2 together. And to the extent there's any question about that, I
3 would encourage all parties to contact the government and
4 discuss that with us as soon as possible. And, of course, to
5 the extent that there is disagreement over that, of course, we
6 reserve our rights to object or take any other appropriate
7 action.

8 THE COURT: Okay. Thank you very much, Mr. Cordaro.

9 MR. CORDARO: Thank you, Your Honor.

10 MR. SCHROCK: Your Honor?

11 THE COURT: Yes, come on.

12 MR. SCHROCK: Ray Schrock of Kirkland & Ellis on
13 behalf of Ally Financial and Ally Bank. I think Your Honor, in
14 reading your body language we'll be very brief.

15 I think suffice to say we do have a disagreement with
16 the committee on behalf of the Ally Bank who is a counterparty
17 to this agreement as well as AFI. We tried to work it out.
18 We'll be happy to speak to them. I don't have a great deal of
19 faith that it's going to get worked out but I think
20 procedurally what you have in front of you is an
21 amended -- it's effectively an amendment to the subservicing
22 agreement and it can just be dealt with in the final order.

23 We disagree with the way the committee framed up the
24 issues for purposes of whether or not this agreement should be
25 approved. I think fundamentally it's an agreement between Ally

1 Bank on the one hand and ResCap on the other. And the question
2 is whether or not the debtors' business judgment should be
3 respected.

4 I don't think that a lot of these other issues come
5 into play but to the extent they do, we'll deal with them. But
6 I think it makes the hearing unnecessarily complex.

7 THE COURT: Thank you, Mr. Schrock.

8 MR. SCHROCK: Um-hum.

9 THE COURT: All right. I'm looking at this long
10 agenda. We still have quite a few matters to cover. We're
11 going to take a lunch break. Before we do, on the agenda on
12 page 4 was the ResCap, the Allstate Insurance Co adversary
13 proceeding which -- actually, this was on the motion to
14 dismiss. I had the trial on the preliminary injunction and it
15 went forward only as to one of the defendants in the case and I
16 ruled from the bench. I'm still waiting for proposed orders.
17 There was the stipulation that was entered into before the
18 hearing that resolved the motion stated until October 31 as to
19 the vast bulk of the defendants.

20 At the time of the hearing, there was an adjournment
21 after the plaintiff put on his case and there was announced on
22 the record a resolution with the FDIC. I still haven't seen an
23 order about that. I received an e-mail from Judge Swain today
24 who has the FDIC matter. She was -- I had advised her of what
25 had occurred at the preliminary injunction hearing and I told

1 her I would forward her the order after it was submitted and
2 entered. I'm still waiting.

3 There also was to be an order as to the one -- I don't
4 remember whether -- but there were three parties that would be
5 covered by orders or one, but I haven't seen any of them yet.
6 Mr. Lee?

7 MR. LEE: We'll go back to your office -- I'm sorry,
8 Gary Lee from Morrison & Forester -- we'll go back to the
9 office as soon as we're done, Your Honor, and make sure that's
10 done.

11 THE COURT: Are they done?

12 MR. LEE: I will check at the break.

13 THE COURT: I really need to -- we need to get that
14 buttoned down.

15 MR. LEE: I will force the issue internally.

16 THE COURT: Okay. All right. So we're at the
17 portion, if I understand it, there's some uncontested matters.
18 I don't know whether anybody wants to be heard with respect to
19 those. I gather the debtor has some proposed stipulations it
20 wants to present. Do I understand that correctly?

21 MR. KLEIN: Good afternoon, Your Honor. Aaron Klein
22 from Morrison & Forester on behalf of the debtors.

23 Yes. With respect to the Shellpoint motion to lift
24 the stay and also the Community South Bank motion to lift the
25 stay, we have prepared stipulations and orders. We are

1 prepared to submit the Shellpoint stipulation to today. And
2 I'm told that we will be sending you a stipulation regarding
3 Community South Bank, a consent order on that one later today
4 or tomorrow morning. But those two have been resolved. We're
5 pleased to report that.

6 THE COURT: All right. Thank you.

7 And there were also listed in the uncontested matters
8 the retention application for Towers Watson Delaware. Mr.
9 Marinuzzi, there have been no objections filed to that as I
10 understand.

11 MR. MARINUZZI: That's correct, Your Honor. No
12 objection was filed to that application in lieu of us --

13 THE COURT: Mr. Masumoto?

14 MR. MASUMOTO: I believe I have a supplemental
15 declaration was filed and that's satisfied --

16 THE COURT: And you're satisfied. Anybody else wish
17 to be heard with respect to the Towers Watson application?

18 All right. It's approved.

19 MR. MARINUZZI: Thank you, Your Honor. We also filed
20 an application to retain Fortace LLC as debtors' consultant in
21 connection with the RMBS litigation.

22 THE COURT: All right. Mr. Masumoto?

23 MR. MASUMOTO: Similarly, we had discussions and I
24 believe a supplemental was filed which resolved those
25 objections.

1 THE COURT: Anybody else wish to be heard on that?

2 It's approved.

3 MR. MARINUZZI: Your Honor, and then, the final
4 retention application was to uncontested matters is the
5 debtors' application to retain Severson & Werson a special
6 California litigation counsel. We filed supplemental
7 disclosures to address the issues.

8 THE COURT: Mr. Masumoto?

9 MR. MASUMOTO: No issues.

10 THE COURT: Anybody else wish to be heard with respect
11 to the Severson & Werson PC retention application? All right.
12 That's approved as well.

13 Are we going to take -- we'll get to the contested
14 matters --

15 MR. MARINUZZI: Your Honor, I'm sorry to interrupt you
16 but we skipped over the debtors' application to extend the time
17 to file schedules and statements and it's not opposed and we
18 filed them.

19 THE COURT: Anybody wish to be heard with respect to
20 the application to extend time on schedules? All right. It's
21 granted.

22 MR. MARINUZZI: Thank you, Your Honor.

23 THE COURT: Thank you. All right. Let me -- does the
24 agenda remain accurate as to those contested matters; Gilbert,
25 Wells Fargo, Centerview and there were a few others. All

1 right. We're going to be in recess until 2 o'clock. We're
2 into the one hour recess and then we'll try to knock it off.
3 Okay?

4 MR. MARINUZZI: Okay, Your Honor.

5 THE COURT: Okay. Thank you very much.

6 MR. MARINUZZI: Thank you.

7 (Recess from 12:57 p.m. until 2:06 p.m.)

8 THE COURT: Please be seated.

9 MR. MARINUZZI: Good afternoon, Your Honor.

10 THE COURT: Mr. Marinuzzi?

11 MR. MARINUZZI: For the record, Lorenzo Marinuzzi,
12 Morrison & Foerster on behalf of the debtors. Your Honor, if
13 it's okay with the Court, we'd like to proceed out of order a
14 little bit on the contested matters and deal with the retention
15 issues, because they're not really contested for the most part.

16 THE COURT: That's fine.

17 MR. MARINUZZI: And I'd like to begin with item 4,
18 which is the debtors' application to retain Centerview as
19 investment banker. Your Honor, the U.S. Trustee filed an
20 objection to the motion which had originally been filed back in
21 June, and we continued the hearing to the 14th -- to today --
22 I'm sorry 24th. And we believe that the issues raised by the
23 U.S. Trustee, which were really in the nature of disclosure,
24 have been addressed with the supplemental declaration of Marc
25 Puntus in support of the application.

1 And basically, Your Honor, to highlight the economic
2 terms of Centerview's retention: Centerview's being retained
3 and has been retained to raise financing as well as oversee and
4 administer the sale process. Their compensation post-petition
5 calls for a monthly fee of 300,000 dollars, a transaction fee
6 of 12.5 million dollars, half of which was paid upon the
7 execution of the asset purchase agreement. The other half
8 would be due and earned at closing. But as an accommodation to
9 the committee, Centerview's agreed that that second half will
10 not be paid until the effective date of a plan of
11 reorganization.

12 There's also a financing fee of up to five million
13 dollars which has been paid, and an interim transaction fee of
14 1.25 million dollars, which has already been paid as well.
15 There's crediting that's set forth in the engagement letter.
16 Crediting includes fifty percent of all monthlies against any
17 transaction fees -- fifty percent of monthlies earned post-
18 petition. And there's also a crediting against the transaction
19 fee of fifty percent of all financing fees earned over 500,000
20 dollars.

21 Your Honor, we believe that the terms of their
22 retention are market. And unless the Court has any questions
23 or anyone else wishes to be heard on it, we would ask that the
24 Court approve the debtors' retention of Centerview.

25 THE COURT: Mr. Masumoto?

1 MR. MASUMOTO: Your Honor, subject to a review of the
2 final order, we believe the incorporated change in the final
3 order that addresses our concerns -- but I believe they have a
4 final change that needs to be circulated.

5 MR. MARINUZZI: Correct, Your Honor. The final change
6 is the change I just mentioned about not being paid the second
7 half of the transaction fee until the effective date of a plan.

8 THE COURT: Does anybody else wish to be heard with
9 respect to the Centerview retention application? Mr. Eckstein?

10 MR. ECKSTEIN: Your Honor, Kenneth Eckstein from
11 Kramer Levin on behalf of the committee.

12 Your Honor, we did review the application carefully.
13 We reviewed comparable retention applications for investment
14 bankers in large, complex cases. I think we concur with the
15 fact that this is market. Or to the extent there's a market,
16 this is somewhere in the market. We did ask all of the
17 financial professionals to make the modification that
18 Centerview has agreed to, which is that completion fees be paid
19 only upon the effective date of a plan. And that was agreed
20 to.

21 And in an effort not to contest all matters that are
22 raised in the case, the committee, with that modification, did
23 not have an objection to the application.

24 THE COURT: Thank you. Anybody else wish to be heard?

25 All right. The Centerview application is approved

1 subject to the U.S. Trustee and the Court having an opportunity
2 to review the final order.

3 MR. MARINUZZI: Thank you, Your Honor. That brings us
4 to the debtors' application to retain FTI Consulting as
5 financial advisor.

6 Your Honor, the United States Trustee had also
7 objected to this application. And in response to that, FTI has
8 filed additional disclosures, which we believe address the U.S.
9 Trustee's concerns. This application was originally filed
10 seeking approval of compensation that's a little bit different
11 from what is ultimately being proposed. And that's a result of
12 modifications requested by the committee, after extensive
13 discussions.

14 And whereas originally FTI was to receive a monthly
15 fee of 1.75 million dollars through the end of March, and a 4.3
16 million dollar completion fee, payable upon the earlier of the
17 closing of a sale transaction, or confirmation of a plan, the
18 compensation's been modified as set forth in, I believe,
19 Exhibit 2 to the supplemental declaration of William Nolan.

20 And just to summarize the economics, Your Honor.
21 There is now -- it's an hourly engagement, subject to a cap.
22 And to the extent that FTI exceeds for that given month
23 whatever that cap is, it carries forward. And it carries
24 forward through April, and thereafter there's no longer the
25 ability to roll forward any overage.

1 So in looking at the numbers and reconciling what made
2 sense -- and let me back up a second. Part of the reason why
3 the company and FTI had agreed to an arrangement that held a
4 steady state was in part for cash flow purposes, to manage what
5 the professional expenses would be. And so revisiting those
6 numbers with the committee, FTI and the company and the
7 committee have agreed that for the period from the inception of
8 the case through June 30th, the cap applicable to that period
9 would be 4 million dollars. And then for the period July
10 through December of this year, the cap would be 1.75 million
11 dollars. And then beginning in January and running through the
12 end of March, for those three months, the cap would be 1.25
13 million dollars. And then thereafter, the cap would be 1
14 million dollars. And the completion fee, which had originally
15 been 4.3 million dollars, is now 2.5 million dollars.

16 Your Honor, I believe that satisfies the committee's
17 concerns. The U.S. Trustee's concerns, I believe, as I noted,
18 were addressed in the supplemental declaration. We'll
19 certainly show a copy of the order to both the U.S. Trustee and
20 the committee before we present it to the Court. But unless
21 Your Honor has any questions --

22 THE COURT: I do. My question really relates to FTI's
23 work for the Chapter 7 trustee of Alliance Bank Corp., and
24 how -- because they are -- the Chapter 7 trustee, as I
25 understand it, is involved with an adversary proceeding against

1 the debtors. And how is the Alliance Bank Corp. potential
2 conflict matter being handled?

3 MR. MARINUZZI: Your Honor, I know there was some
4 disclosure on this in Mr. Nolan's supplemental declaration, and
5 possibly in the original application, because we had wanted to
6 make sure that it was addressed by the court. We were
7 satisfied that it didn't present a conflict, just based on the
8 nature of the proceedings and that there had been a wall
9 between those that had provided services for the Chapter 7
10 trustee and those providing services in this case.

11 I'm trying to find the portion of the declaration
12 that's relevant to this point. And Mr. Nolan, by the way, Your
13 Honor, is here in court with us, and would be happy to address
14 the Court's concern, if I fail to do it adequately.

15 Your Honor, in paragraph 7 of Mr. Nolan's initial
16 declaration he describes the claims associated with that
17 Chapter 7 case. And as he notes, the Chapter 7 trustee of
18 Alliance Bank Corp. is currently involved in an adversary
19 proceeding with Residential Funding Corporation for recovery of
20 pre-petition transfers. FTI has agreed to work cooperatively
21 with the parties-in-interest to share files and work product.
22 But that engagement was essentially completed in 2010. So it
23 predates, significantly, the commencement of this case.

24 From time to time they've been asked to provide and
25 interpret certain accounting information from Alliance Bank

1 Corp.'s books and records. But the FTI professionals involved
2 in the Alliance Bank Corp. engagement have not been asked to
3 provide any services on this matter since March of 2012.

4 THE COURT: Are those people going to be screened from
5 ResCap?

6 MR. MARINUZZI: They will be, Your Honor.

7 THE COURT: All right. Mr. Masumoto?

8 MR. MASUMOTO: Your Honor, we have no further
9 objections. They did also include a modification to the order
10 which addressed further concerns that we had.

11 THE COURT: All right. Does anybody else wish to be
12 heard with respect to the FTI retention? Mr. Eckstein?

13 MR. ECKSTEIN: Your Honor, just very briefly. Mr.
14 Marinuzzi has accurately captured the economic modifications to
15 the FTI arrangement. And in contrast to the Centerview
16 retention, where it's a relatively small monthly and a large
17 back-end, this one had a large monthly. And so the notion of
18 building in a cap we thought was actually quite meaningful.
19 Because it's very difficult to project out into the future what
20 would be an appropriate cap. So the fact that there are now
21 going to be hourly rates with a cap, we thought was actually a
22 financial advantage to the estate.

23 FTI did agree to reduce the completion fee. But we
24 thought that the cap provided meaningful consideration, so to
25 speak, for the completion fee. I just wanted to point out that

1 the order now provides that the monthlies will be subject to
2 Section 330. So if it turns out that the scope should change,
3 one way or the other, we'll all be able to go back and, I
4 think, talk to FTI. And I think that that was understood, that
5 we'll be able to look at where the case is. And the completion
6 fee, we understand, is a 328 order.

7 THE COURT: Thank you.

8 MR. ECKSTEIN: So with that, we're satisfied, Your
9 Honor.

10 THE COURT: Anybody else wish to be heard?

11 All right. The FTI retention application is approved.

12 MR. MARINUZZI: Your Honor, that's it as far as the
13 debtors' applications respecting professionals. I'll turn it
14 over to Mr. Eckstein to address the committee's application to
15 retain Moelis.

16 MR. ECKSTEIN: If we can just have a second, Your
17 Honor?

18 THE COURT: Sure.

19 (Pause)

20 MR. ECKSTEIN: Your Honor, the creditors' committee
21 has engaged Moelis as an investment bank in the case. We've
22 also retained AlixPartners as a financial advisor. The
23 AlixPartners application is being adjourned to, I believe, the
24 August 8th hearing, because there are still open issues in
25 connection with disclosure that the U.S. Trustee is looking at.

1 And I think Alix agreed yesterday that it was going to file a
2 supplemental. So we're going to go forward just with the
3 Moelis retention today.

4 The Moelis retention application, from an economic
5 standpoint, they have a monthly fee of 225,000 dollars per
6 month. And they have a completion fee, Your Honor, of 7.75
7 million dollars, which will be payable in the same manner as
8 the Centerview and FTI completion fees, upon the effective date
9 of a plan. They don't have any interim payments of a
10 completion fee, so it's all paid at the end of the case.

11 And again, we did look at comparable retentions for
12 financial advisors for committees in large, complex cases. And
13 there was a fair amount of back-and-forth between the committee
14 and Moelis to ultimately arrive at the terms of this retention.
15 And we believe that the retention is reasonable and consistent
16 with what is approved in cases for similar complexity and size
17 in terms of transactions and amount of debt.

18 I think there are two issues that are still open with
19 the U.S. Trustee. One, I believe, relates to the identity of
20 certain passive minority investors in Moelis itself. And I
21 believe counsel for Moelis is in court and can speak to that
22 issue. But my understanding is that the identity has been
23 disclosed to the U.S. Trustee.

24 THE COURT: I saw it was going to be disclosed in
25 confidence to the U.S. Trustee, the committee, and the debtor.

1 MR. ECKSTEIN: And we felt that that was satisfactory.
2 These are under one percent minority passive investors. And we
3 don't think it has a relation to the case. They were on the
4 debtors' list, which is why it was flagged. But we thought
5 that those disclosures were appropriate.

6 The other issue, we understand, relates to
7 reimbursement of Moelis for outside legal fees in connection
8 with the retention application and the preparation of fee
9 applications. I was in court when this was discussed most
10 recently. And I am advocating some type of policy be adopted
11 by the investment banks. But until that happens, the issue is
12 still open. And so I'll let the U.S. Trustee address that
13 issue.

14 THE COURT: Mr. Masumoto?

15 The investment bank policy is to ask for everything.

16 MR. MASUMOTO: Good afternoon, Your Honor. Brian
17 Masumoto for the Office of the United States Trustee. Your
18 Honor, as Mr. Eckstein indicated, we have pretty much narrowed
19 down the issues. There is sort of a half issue that we had
20 discussed yesterday with Moelis, in which we had asked them to
21 expand the search for conflicts beyond the restructuring group
22 to include partners and the level down from partners, to
23 determine if there were any conflicts.

24 But with respect to the other two remaining issues, I
25 believe they were accurately represented by Mr. Eckstein. With

1 respect to the confidential parties, it's the position of the
2 U.S. Trustee, while we certainly welcome the disclosure to our
3 office, to the committee, and to the debtors, we believe that,
4 in fact, the disclosure is most effective if it's done so that
5 other parties-in-interest who may, in fact, be affected by the
6 disclosure, can weigh in.

7 So it is our preference that any of the confidential
8 affiliates that are listed be identified. I believe we had
9 tried to maintain that same policy with Alix, because they also
10 had certain confidential parties-in-interest. And I believe,
11 based upon the supplement that I've seen, is that they appear
12 to be complying. Once again --

13 THE COURT: When you say "complying", what do you
14 mean?

15 MR. MASUMOTO: Complying, they've identified the
16 confidential parties that the original declaration did not
17 formerly disclose. But we will defer to the Court as to
18 whether or not the disclosure just to the committee, the U.S.
19 Trustee, and the debtors is sufficient with respect to Moelis'
20 circumstance.

21 With respect to the remaining issue, once again, it is
22 an issue that has been reviewed by the Court several times and
23 became an issue -- was raised as an issue and discussed during
24 the July 13th, I believe, hearing. At that time -- just to try
25 to get to the heart of it -- I believe at that time Your Honor

1 did indicate that the decision in Borders was a decision
2 rendered at the time where the fee applications had been
3 considered, where the expenses that --

4 THE COURT: The objection hadn't been asserted at the
5 time of the retention application.

6 MR. MASUMOTO: That's correct, Your Honor. And that
7 in this case, we are asserting it at the outset. And in
8 addition, one other difference from the Borders decision
9 involving Mercer is that the Mercer professional in the Borders
10 case, as well as in this case, is an hourly -- is a
11 professional billing on an hourly basis.

12 Moelis, in this case, as indicated by counsel, is
13 billing on a fixed-fee basis. As indicated, they're billing at
14 a monthly rate of 225,000 dollars, with a back-end of 7.75
15 million dollars. I believe at a minimum, should a
16 restructuring transaction occur within the nine-month period,
17 their minimum compensation will be 9,775,000 dollars.

18 And basically -- and frankly, from the perspective of
19 the program, financial advisors are well-compensated. Based
20 upon their compensation structure, frequently, at the end of
21 the day, taking into account their fixed-fee compensation as
22 well as their back-end fee, they're frequently the most highly
23 compensated professionals in these cases.

24 As a result, it is the position of the program that
25 the attorneys' fees should, in fact, be a cost of doing

1 business. I believe Your Honor mentioned in the Borders
2 decision, perhaps in a slightly different context, that in many
3 cases the cost of doing business -- certain of the costs should
4 be borne by the applicant. And in this case, where we have a
5 fixed-fee professional who is well-compensated, the cost of the
6 outside attorneys could well be borne by these professionals,
7 who routinely appear in bankruptcy and should have the
8 wherewithal and certainly the capability of: 1) being able to
9 prepare and submit a retention application; and 2) the fee
10 applications that are filed.

11 I do note, and I do understand, Your Honor mentioned
12 the Mesa case in the Borders case in regard to the level of the
13 fees that would be charged for a fee application process. And
14 in those cases, a three to five percent fee might have been --
15 would be appropriate or might have been appropriate under the
16 circumstances.

17 THE COURT: That was the -- what I mentioned -- I
18 think, because I haven't gone back to look at it -- but that
19 was trying to establish a range of compensable fees in
20 connection with preparation of a fee application.

21 MR. MASUMOTO: That's exactly right, Your Honor. And
22 in fact, I think it was made clear, both in the Mesa case as
23 well as in Borders, that that percentage may not necessarily
24 apply to every fee application. Certainly, if one were to
25 apply that rate the present compensation, even at the minimum,

1 nine million dollars, the amount charged for a fee application
2 would be quite substantial. I believe even at the three
3 percent rate, we're talking almost 300,000 --

4 THE COURT: I can't imagine applying that structure in
5 a case such as this, with an engagement involving the dollars
6 that this does.

7 MR. MASUMOTO: Agreed, Your Honor. And so therefore,
8 from our perspective, the cost of preparing the fee
9 applications, in this case, which would probably represent the
10 larger part of the compensation, my understanding is that,
11 based upon the supplemental that was filed by Moelis, the
12 parties having reviewed the transcript of the prior hearing,
13 have really narrowed the amount they'll be charging for the
14 preparation of the retention application.

15 THE COURT: What is that?

16 MR. MASUMOTO: I believe we were advised that it's in
17 the range of 2,000 dollars. That may be adjusted further. And
18 that's really relatively de minimis. So we're really talking
19 about the fee application in this case. And given the amounts
20 involved, certainly at the outset, and again, the size of their
21 compensation, we do believe that, in fact, the fee application
22 preparation, as well as the retention should be borne by the
23 applicant.

24 THE COURT: The difference, Mr. Masumoto, is -- I
25 mean, the rules about whether preparation of fee applications

1 are compensable was a rule, at least as I saw it, that was
2 derived outside of this context of professional advisors. The
3 cases support a law firm charging for preparation of its fee
4 application. The time it spends preparing a fee application is
5 compensable. That was, as I understood it, the law when I
6 wrote the Borders decision.

7 And I think the rationale is, if it's compensable for
8 a law firm to charge for the preparation of its own fee
9 application, shouldn't it be compensable for professional
10 advisors who are not lawyers to do the same. That given the
11 rules that are applicable to fee applications, it, for better
12 or worse, has become a task that is largely overseen or
13 reviewed by lawyers.

14 So if a law firm can do it, why shouldn't Moelis be
15 able to do it? I view that, actually, as different than the
16 fees in connection with retention, which I think is a stronger
17 argument that is overhead.

18 MR. MASUMOTO: Your Honor, part of the concern that
19 our office has is that, once again, we do have the distinction
20 between any hourly compensated professional with a fixed-fee
21 professional. And from our perspective, we regard that in the
22 aggregate. The hourly compensated professional is entitled to
23 charge for fee application preparation --

24 THE COURT: It's going to cost a lot less for the
25 periodic applications of a fixed-fee professional, because they

1 don't have to provide quite the same level of detail that the
2 hourly professional does.

3 MR. MASUMOTO: And from our perspective, that's
4 perhaps another argument that, in fact, it should be an expense
5 absorbed by the estate (sic). Once again, when looking at the
6 aggregate, the professionals, even if you include the time that
7 they would spend, or even the cost of preparing the fee
8 application, their compensation, in general, seems to far
9 exceed any of the hourly compensated professionals.

10 THE COURT: But I want to be sure. Your -- the third
11 piece of this that usually comes up is indemnification, if
12 they're deposed, and they have counsel. You're not objecting
13 to that?

14 MR. MASUMOTO: No, Your Honor. We've always taken the
15 position that the costs associated with attorneys' fees for
16 indemnification purposes are permissible, pursuant to the
17 agreement that we've struck with the investment and financial
18 advisors.

19 THE COURT: Okay. Is it really only 2,000 dollars in
20 fees in connection with retention?

21 MR. RIELA: Good afternoon, Your Honor. Michael Riela
22 from Latham & Watkins on behalf of Mo --

23 THE COURT: Speak quickly so we don't run the time up
24 anymore.

25 MR. RIELA: I was just about to say, I'm going to be

1 very brief given the topic at hand here. With respect to the
2 application itself, since Moelis gets retained in a lot of
3 Chapter 11 cases, they have their forms done very well, and I
4 don't have to spend too much time doing it. More of the fees
5 that I've incurred to date have been basically dealing with the
6 objections.

7 So if we're talking about all retention-related fees,
8 like prosecuting the retention in connection with the
9 objections, it's going to be a bit more than 2,000 dollars. I
10 would say offhand, that perhaps in connection with doing the
11 retention application, reviewing the affidavit and all of that,
12 probably in the neighborhood of 3- to 4,000 dollars, more in
13 connection with dealing with this objection, with respect to
14 that question. And I'm happy to address other issues.

15 THE COURT: You know, the thing is, in -- I can't
16 remember the name -- Judge Bernstein's opinion -- was it CCT,
17 he doesn't make a blanket statement, but he basically comes out
18 that the general rule is you don't get paid for defending your
19 fee application. If there's a challenge to the fee
20 application, for example, you don't get paid for defending
21 that. If objections are raised to retention of a professional
22 because not sufficient information has been disclosed about
23 conflicts, that's really inherent in -- if you want to get
24 hired, you disclose the information that the U.S. Trustee
25 insists, or you put the issue to the Court and let the Court

1 decide in the end.

2 Anybody else wish to be heard with respect to these
3 remaining issues on reimbursement of outside counsel fees?

4 MR. RIELA: If I could be just heard for one second,
5 Your Honor, again, staying very brief here. Just to raise a
6 couple of concerns that were raised by Mr. Masumoto as well as
7 by this Court. I did read the transcript from the last hearing
8 with respect to Mercer, and the supplemental declaration was
9 drafted to deal with the issues that Your Honor raised during
10 that time, in what's done outside of bankruptcy, what's done in
11 bankruptcy cases, what is Moelis' standard here.

12 And Moelis does retain outside counsel in Chapter 11
13 cases. The engagement letters in bankruptcy and nonbankruptcy
14 cases always provide for payment of outside counsel fees. To
15 the extent that those counsel fees are actually incurred,
16 they're typically paid -- they're typically paid in bankruptcy
17 as well. We're not going to be seeking any fees in connection
18 with negotiating or drafting the engagement letter. That was
19 only a couple thousand dollars on that end --

20 THE COURT: Press the button on the computer, and it
21 spits it out.

22 MR. RIELA: Exactly. To a large extent, yes,
23 particularly, these days, with good form engagement letters.

24 The only point that I want to address is Mr.
25 Masumoto's point about investment bankers being very highly

1 paid in cases --

2 THE COURT: Are you denying that?

3 MR. RIELA: I'm not denying. However, on the other
4 hand, though, I see a lot of Chapter 11 cases where lawyers get
5 quite a bit more than the investment bankers, and usually the
6 lawyers do get paid for their work in both retention and fee
7 application preparation matters.

8 THE COURT: So am I supposed to have sympathy for the
9 investment bankers because sometimes lawyers earn more?

10 MR. RIELA: Maybe a little. I don't know. I'm
11 kidding, Your Honor. Unless Your Honor has any questions about
12 the supplemental declaration, Jared Dermont is here in the
13 courtroom. Also, if you have any questions about the
14 confidentiality issue with respect to the few passive
15 investors, that is confidential information. Moelis is a
16 private company. And again, we did provide those names on a
17 confidential basis to both the debtors and --

18 THE COURT: What's the largest percentage ownership of
19 any of the confidential investors?

20 MR. RIELA: They're all less than one percent.

21 THE COURT: Okay. All right. You know, this issue of
22 lawyers' fees as expense reimbursement has come before me now
23 in a number of different cases. I wrote the Borders opinion.
24 In Borders the issue arose at the time of the fee application.
25 At the time of the retention the U.S. Trustee had a general

1 reservation of rights, but did not explicitly raise this issue
2 of reimbursement of professionals. The opinion says what it
3 says, and I continue to adhere to it.

4 I did say in the opinion that the issues could well be
5 different if the objection were raised at the outset, and it
6 has been here.

7 I'm reluctant to adopt bright-line rules applicable in
8 all cases, and I don't intend to write another opinion at this
9 point on what's reimbursable and what is not. I'm persuaded by
10 Mr. Masumoto's argument about the distinction between
11 professionals compensated on an hourly basis and the fixed-fee
12 professionals, such as Moelis, particularly with the upside
13 that it has with completion fees, et cetera.

14 Again, I'm not intending to establish a rule for all
15 cases in all circumstances. But having reviewed this matter
16 and considered the objection of the U.S. Trustee, I'm going to
17 sustain the U.S. Trustee objection in part and overrule it in
18 part. With respect to the retention issues, I'm going to
19 sustain the objection. I do believe, particularly, since given
20 the size of this proposed engagement, that the very modest
21 amount of fees in connection with retention should be
22 considered part of overhead, whether Moelis seeks to include
23 such provisions in all of its engagement letters or not. So as
24 to that portion of it, the objection is sustained.

25 With respect to reimbursement of outside counsel fees

1 in connection with preparation of fee applications, for the
2 reasons I articulated earlier, I think the law is reasonably
3 well-settled, certainly in this district, that the counsel
4 fees, when counsel prepares their own fee applications, the
5 time included and the cost for preparing fee applications is
6 compensable, subject to a very careful scrutiny by the Court.
7 And I think a similar rule should apply, whether it's Moelis or
8 AlixPartners or Mercer; whether it's an hourly fee professional
9 or a fixed-fee professional.

10 The obligation to do fee applications is one imposed
11 by the Bankruptcy Code. For better or worse, the strictures in
12 the U.S. Trustee guidelines and in applicable case law is such
13 that lawyers' time is generally required in connection with
14 preparing fee applications.

15 I think Mr. Masumoto addressed what I said in Mesa,
16 which had discussed not, again, a rule applicable in all cases,
17 but I discussed -- I think Ms. Frejka, you were the one who, if
18 I'm not mistaken, didn't you argue that in --

19 MS. FREJKA: No, Your Honor.

20 THE COURT: No?

21 MS. FREJKA: That is the one that they didn't have
22 counsel for. They did it themselves.

23 THE COURT: All right. Okay. That the three to five
24 percent was a general guideline range, barring other
25 circumstances, might be applicable, circumstances such as the

1 very large size of the expected engagement fee in this case.

2 So one shouldn't think that that applies. But as I do
3 in all cases of fee applications, the applications are
4 scrutinized carefully. With respect to expense reimbursement
5 for counsel fees, I expect detailed time records to be
6 provided, and they'll be scrutinized carefully. But subject to
7 that, I'm going to overrule, Mr. Masumoto, the U.S. Trustee's
8 objection with respect to whether fees in connection with
9 preparation of fee applications are compensable.

10 Mr. Masumoto, are there other issues with respect
11 Moelis that remain, or --

12 MR. MASUMOTO: No, Your Honor. I believe a
13 supplemental disclosure regarding -- outside their
14 restructuring group is all that we required.

15 THE COURT: Okay.

16 MR. MASUMOTO: And the disclosure of the
17 confidential --

18 THE COURT: Yes. With respect to the disclosure of
19 the confidential investors, again, I'm not intending -- because
20 I know that my colleagues and I from time to time see
21 transcripts of our hearings showing up in future cases. I want
22 to make clear that in ruling on this issue now, I am not
23 intending to adopt a bright-line rule applicable in all
24 circumstances, or even for all professional advisors in this
25 case.

1 I will accept counsel's representation -- I have not
2 looked at this confidential list of investors -- but I accept
3 the representation as accurate -- the list has been provided to
4 the U.S. Trustee and to the debtor and committee counsel --
5 that none of the investors holds more than one percent. On
6 that basis, I'm satisfied that submitting it in camera to those
7 parties who've received it, is sufficient here, and overrule
8 the objection in this case, under these circumstances, beyond
9 that. But not intending to adopt a bright-line rule for all
10 cases.

11 Is that it, Mr. Masumoto?

12 MR. MASUMOTO: Yes, Your Honor.

13 THE COURT: Okay. Thank you.

14 MR. MASUMOTO: Thank you, Your Honor.

15 THE COURT: All right.

16 MR. RIELA: Your Honor, is it acceptable for me to be
17 excused?

18 THE COURT: Yes, it is. Close the meter off.

19 MR. RIELA: Excuse me?

20 THE COURT: Close the meter off.

21 MR. RIELA: Close the meter off.

22 MR. KLEIN: Good afternoon, Your Honor; Aaron Klein
23 from Morrison & Foerster on behalf of the debtors. We have two
24 contested motions to lift the automatic stay. I know that the
25 agenda reflects the first one as the Gilbert motion. With your

1 permission, we'd like to move forward first with the motion
2 filed by Aurora Bank. But we need to confirm whether counsel
3 for Aurora Bank is on the phone today.

4 MR. LLOYD: Yes, Your Honor; James Lloyd representing
5 Aurora Bank, from Green & Hall in California.

6 THE COURT: All right, thank you.

7 MR. LLOYD: Thank you, Your Honor.

8 THE COURT: Go ahead, counsel. It's your motion, so
9 let me hear the motion to lift the stay from Aurora.

10 MR. LLOYD: Yes, Your Honor. Aurora FSB is a bank
11 that was involved in servicing home mortgage loans. There are
12 four separate mortgage loans. They total about 1.4 million.
13 And as a result of transgressions by GMAC in wrongfully
14 reconveying, as part of --

15 THE COURT: I think that's alleged transgressions, at
16 this point.

17 MR. LLOYD: Alleged transgressions. Well, you know,
18 you don't say -- you don't get it -- anyway. So the
19 reconveyances made Aurora unable to foreclose on these
20 properties, and therefore we've been damaged. In the process
21 of getting the motion -- making the motion to lift the
22 automatic stay, and also in responding to the opposition and
23 objections by GMAC, the bottom line here really is, you know,
24 why would the Court want to lift the stay when it appears that
25 we're just one of many.

1 And in reality, there are vagaries of California real
2 estate law that -- for example, these are called trustees.
3 They're not mortgages. There's a little bit of a difference.
4 There are other issues associated with some of the complexities
5 of California real estate law. And so it's better if these
6 California real estate mortgage issues are litigated in
7 California.

8 The witnesses are there. The --

9 THE COURT: You know, let me just stop you there. I
10 don't hold myself out as the resident expert, but I practiced
11 law in California for thirteen years, remain a member of the
12 California bar, and I'm generally quite familiar with
13 California real estate and mortgage law, so that part of your
14 argument doesn't get much traction with me.

15 MR. LLOYD: Well, I was a member of the New York bar
16 for a long time, still am, so I understand where you're coming
17 from, Your Honor.

18 The other issue, then, would really -- what we're
19 trying to do is, as what was done in the case of In re Joyner,
20 is to allow us to proceed in state court so that we can obtain
21 basically the monetary damages, and find out -- so that we can
22 reduce these claims against the debtor to a judgment. And it
23 allows us to determine exactly where Aurora Bank stands in this
24 mess of litigation.

25 We've tried to mediate. We've tried to reduce the

1 cost and the burden to GMAC. I think we can still do that.
2 But in light of how we'd like to proceed, I think it's in the
3 best interests of the debtors, and it would certainly assist in
4 judicial economy to lift the stay to allow us to proceed so
5 that we can get a money judgment and then get back in line
6 where we need to be.

7 THE COURT: All right. Anything else you want to add?
8 All right, let me hear ResCap's counsel.

9 MR. KLEIN: Thank you, Your Honor. Again, Aaron
10 Klein, Morrison & Foerster, on behalf of the debtors.

11 Your Honor, our response is pretty straightforward and
12 simple. Aurora has not met its burden to show cause to lift
13 the fundamental protections afforded by the automatic stay to
14 the debtors. This is a classic core matter dealing with the
15 liquidation of pre-petition money damages claims against the
16 debtors.

17 Let me take a step back. The actions underlying in
18 California, Aurora is asserting claims against the debtors.
19 They're trying to liquidate those claims. In one of those
20 actions, what they've termed the joint action, which is really
21 about three different properties, where they allege
22 transgressions against the debtors for wrongful reconveyance of
23 deeds of trust, in that action itself, we're the only
24 defendants.

25 And so the idea here that they're trying to reduce

1 their claims so that they understand where they are with
2 relation to other unnamed parties, doesn't really make much
3 sense to me. This is not a complex matter, as Your Honor said,
4 that Aurora needs to litigate in a specialized forum. This
5 Court is more than capable of adjudicating the claims that
6 Aurora has against the debtors, and should, through the uniform
7 centralized process for claimants provided under the Bankruptcy
8 Code.

9 THE COURT: Is there a second case that does have
10 other defendants?

11 MR. KLEIN: Right now, there is another case called
12 the Rogers action, in which GMAC mortgage has actually launched
13 an action to determine whether or not a reconveyance or a
14 release of a lien was void on its face because they released
15 the wrong lien -- allegedly released the wrong lien. So there
16 are defendants in that case, but they're only as a counterclaim
17 asserted by Aurora against the debtors in that case.

18 THE COURT: So what's the status of your affirmative
19 case?

20 MR. KLEIN: The status of the affirmative case is
21 that --

22 THE COURT: Because you're not going to get to use the
23 stay as a sword and shield.

24 MR. KLEIN: Well, we're not trying to, Your Honor.
25 We're not -- we haven't moved forward with that. What we're

1 trying to do in that case is to get a declaratory judgment that
2 says whether our reconveyance was right or wrong. We're not
3 seeking money damages in that case, so --

4 THE COURT: Yes, but why should you be -- are you
5 attempting to proceed with your declaratory judgment action,
6 and at the same time preventing Aurora from proceeding with its
7 counterclaim?

8 MR. KLEIN: Right now, my understanding is, we're not
9 moving forward with that case. We're not moving forward with
10 any of these cases, the Rogers case or any of the cases
11 involved in the joint action. We did go to mediation in the
12 Rogers case. That mediation was unsuccessful, Your Honor.

13 THE COURT: I think --

14 MR. LLOYD: Your Honor, James Lloyd again. My
15 understanding --

16 THE COURT: No, could you just hold on. I'll give you
17 a chance after Mr. Klein is finished. Sure.

18 MR. LLOYD: Thank you. Sorry, Your Honor.

19 MR. KLEIN: Your Honor, I'm not going to take a long
20 time here. I'll be brief. I think the simple fact, Your
21 Honor, is that the claims that Aurora is bringing against us
22 are garden-variety pre-petition claims that can be liquidated
23 here in the bankruptcy court. The key point -- and I can
24 address the Sonnax factors, and I'm very prepared to do so --
25 the key point is there's a simple resolution for Aurora. If

1 it's seeking money damages against the debtors solely, the
2 remedy here is to file a proof of claim in this court and
3 liquidate its damages.

4 If they're seeking to bring claims against third
5 parties that they name in their reply: the current homeowners,
6 the subsequent encumbrancers, the previous homeowners, all it
7 has to do is to sever GMAC Mortgage and ETS, which are the
8 debtor-defendants, from the California actions, and pursue
9 whatever claims they may have against third parties in
10 California state courts.

11 I'm very happy to walk this Court through --

12 THE COURT: You don't need to go through each of the
13 Sonnax factors.

14 MR. KLEIN: Okay. Well, let me just say that we think
15 each of the factors does weigh in our favor of maintaining the
16 automatic stay, and we don't think that Aurora has met its
17 burden to even show good cause for why the stay should be
18 lifted.

19 THE COURT: All right. Mr. Lloyd?

20 MR. LLOYD: Well, Judge, just in quick response to
21 that, Your Honor. And one point is, my understanding is that
22 in the Rogers action there's been no stay filed. So that
23 still -- that technically has not as yet been stayed.

24 With respect to the other points, I, with respect to
25 Mr. Klein, disagree with his assertions that we have not met

1 his burden -- we have not met our burden. I believe that we
2 have. And we're prepared to submit with -- after this
3 argument, we're also prepared to submit on the papers.

4 Also, as Your Honor may be aware, it's not just a core
5 matter of liquidation of claims. These are pivotal issues of
6 California law with respect to --

7 THE COURT: That's what claims resolution usually
8 involves.

9 MR. LLOYD: Right.

10 THE COURT: Virtually everything we get are state law
11 claims against a debtor. And it's part of the claims
12 resolution process.

13 MR. LLOYD: Well, I understand that, Your Honor.
14 Severance is not going to work, because GMAC is pivotal to the
15 whole issue. There's likely to be other third parties
16 involved. Other than that, Your Honor, I believe we've said
17 what we need to say.

18 THE COURT: All right. Mr. Klein, let's come back to
19 the status of the Rogers action.

20 MR. KLEIN: Sure.

21 THE COURT: Mr. Lloyd said it's not stayed. And I
22 understand it's not. And the automatic stay doesn't apply to
23 an action commenced by the debtor. But what court is it in?
24 El Dorado County Superior Court?

25 MR. KLEIN: Right. And, Your Honor --

1 MR. LLOYD: Yes.

2 MR. KLEIN: -- if I can give you a little bit of color
3 here. In that case, we had moved for a rescission, a
4 declaratory judgment saying that a reconveyance or release of
5 the first deed of trust which Aurora was servicing, was void.
6 There was an intervening bankruptcy case, and the bankruptcy
7 trustees sold the property free and clear. So the property is
8 sold.

9 The Rogers action is not stayed. What's really -- the
10 only operative thing happening in the Rogers action, from what
11 I understanding, is that Aurora has filed a counterclaim in
12 intervention against us, because the trustees of the bankruptcy
13 borrowers sold the property free and clear.

14 Aurora has a secured claim in that bankruptcy, so they
15 have -- I don't know if they've received funds, but they are
16 entitled to a certain amount of funds. And the issue in that
17 case and the issue in the other cases, the real factual issues
18 are, what are the damages. Are the damages for the full face
19 amount of the loan? In the Rogers action specifically, are the
20 damages mitigated by the fact that they have a secured claim
21 against the bankruptcy estate that sold the property. And in
22 the other actions, what was the fair market value at the time
23 that Aurora could have foreclosed.

24 So there's many issues here. But with respect to the
25 Rogers action, that's the status of it. And really the only

1 operative thing that's happening --

2 THE COURT: Tell me what your intention is with
3 respect to the declaratory relief claim that the debtors have
4 asserted in the Rogers action.

5 MR. KLEIN: At this point, Your Honor, I think what
6 we're -- this relates to another matter which is part of the
7 joint action, Tozier. In Tozier there was a judgment that said
8 we, the debtors, did have authority to reconvey the first lien
9 deed of trust. And so what I think is pending in the Rogers
10 claim now is waiting for a judgment to occur based upon kind of
11 what happened in the Tozier matter. But from what I
12 understand, Your Honor, we are not moving forward. There has
13 been no stay put in the Rogers matter, but we're not moving
14 forward, litigating the Rogers matter.

15 MR. LLOYD: Your Honor?

16 THE COURT: Go ahead, Mr. Lloyd.

17 MR. LLOYD: Jim Lloyd, again, if I may? My
18 understanding, and with all deference to Mr. Klein, is that
19 Aurora was determined not to be a secured claimant in the
20 underlying bankruptcy action because of the conveyance of the
21 property by GMAC. So we're not standing in line in that action
22 as a secured creditor with a secured claim at all.

23 THE COURT: My most immediate concern and questions
24 really relate to whether the debtor is intending to proceed --
25 here's where I'm confused now, Mr. Klein. It sounded like

1 you're waiting for the court to enter a judgment. On what? Is
2 there a summary judgment motion? What is the precise
3 procedural status?

4 I generally, where --

5 MR. KLEIN: I'm told that the Rogers matter --

6 THE COURT: Let me finish. I don't like when lawyers
7 turn their back on me when I'm speaking, which is what you did.

8 MR. KLEIN: Pardon me, Your Honor.

9 THE COURT: I don't like when lawyers seek to stay or
10 prevent a counterclaim from being asserted in a case in which
11 they're proceeding -- the debtor is proceeding with its own
12 claim. That's why I'm trying to get a very clear answer about
13 if I deny the motion to lift the stay, what is the debtors'
14 intention with respect to its claim against Aurora?

15 MR. KLEIN: If you'd give me one moment, Your Honor, I
16 can confer with --

17 THE COURT: Yes. When you ask to do that, I'm more
18 than happy to allow you to go back and talk to your colleagues.

19 MR. KLEIN: Thank you very much. One minute.

20 Your Honor, after conferring with my colleagues, from
21 what I understand, since the property was sold and we went to
22 mediation and we agreed that there would be a standstill in
23 that Rogers action, nothing has happened since that point. And
24 from our perspective, the debtors' claim is stayed in that
25 case. We're not moving forward with --

1 THE COURT: Well, the automatic stay doesn't apply --

2 MR. KLEIN: -- getting a judgment.

3 THE COURT: -- to a claim that -- did the state court
4 issue a stay?

5 MR. KLEIN: I think there was a sta --

6 MR. LLOYD: Not that I'm aware of, Your Honor. Pardon
7 me for interrupting.

8 MR. KLEIN: There was a standstill agreement while we
9 went to mediation. The mediation failed. And after the
10 mediation, nothing has occurred. There has been no stay put in
11 place in the Rogers action.

12 THE COURT: All right. I'm going to take the matter
13 under submission, and an opinion or order will issue in due
14 course. If I deny -- I'll tell you this; I want to be
15 absolutely crystal clear about this. If I deny -- and I'm not
16 sure what I'm going to do yet -- but if I deny the motion to
17 lift the stay, I would expressly provide the debtor may not
18 proceed with its action without further leave of this court.

19 And if the state court in California -- you can
20 certainly appear if the state court schedules a conference. I
21 don't want to interfere with the superior court's scheduling,
22 because there's no formal stay in place, you need to come back
23 and let me know, and I'll deal with it accordingly. But I
24 don't want the automatic stay used as a sword and a shield.

25 MR. KLEIN: Understood, Your Honor. And I want to

1 make clear from the debtors that we do not intend to do that,
2 and we don't intend to move forward with the Rogers action
3 while at the same time defending against Aurora's claims
4 against us in the joint action.

5 THE COURT: So tell me about the joint action. What
6 is the -- you've got claims asserted in there as well or not?

7 MR. KLEIN: No, Your Honor. The claims --

8 THE COURT: You're just --

9 MR. KLEIN: -- the claims --

10 THE COURT: -- the debtors are just defendants.

11 MR. KLEIN: We're the defendants.

12 THE COURT: Okay.

13 MR. KLEIN: Yes. And in the Rogers action, again,
14 we're not asserting claims for money damages at all.

15 THE COURT: I understand what you're saying. You're
16 not asserting claims for money damages, just declaratory
17 relief.

18 MR. KLEIN: Right.

19 THE COURT: Which can make -- I haven't seen the
20 pleadings in the case. I don't really want to look at the
21 pleadings at this point. I may ask to see them. But for now,
22 I'm going to take the matter under submission. Thank you very
23 much.

24 MR. KLEIN: Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Lloyd.

1 MR. LLOYD: Thank you very much, Your Honor.

2 MR. KLEIN: Your Honor, the next matter is Gilbert's
3 motion to dismiss the Chapter 11 case, or in the alternative, a
4 motion for relief from the automatic stay.

5 THE COURT: Right.

6 MR. KLEIN: I would cede the podium to counsel for
7 Gilbert.

8 THE COURT: Okay. Thank you.

9 Why don't you just pull the microphone down a little
10 bit, make it easier for you. Thank you.

11 MS. PARKER-LOWE: Good afternoon. My name is
12 Katherine Park-Lowe, and I represent Mr. and Mrs. Gilbert. And
13 we're seeking relief from the stay. Mr. and Mrs. Gilbert's
14 case was -- first of all let me back up just a minute.

15 The Gilberts' home and the Gilberts' mortgage is not
16 property of the debtors' estate. That was established by the
17 North Carolina Court of Appeals more than a year ago. The
18 Deutsche Bank and GMAC Mortgage, as servicer, failed to
19 establish that they had the right to proceed with the
20 foreclosure.

21 In the course of the foreclosure action, the Gilberts
22 filed an equitable action in North Carolina which was removed
23 by the defendants to the district court. From there, that case
24 was dismissed. We appealed to the Fourth Circuit Court of
25 Appeals. The Fourth Circuit reinstated the entire case except

1 for one money damages claim.

2 It is an important case for consumers, but also for
3 bankers, because twelve days later, Bank of America tried to
4 get into the case just after the debtors filed a petition for
5 rehearing. Bank of America tried to get into this case telling
6 the Fourth Circuit Court of Appeals that it did not know what
7 it was doing.

8 And we're seeking relief from the stay so that the
9 time period for the defendants to file a petition for cert can
10 run, and so that this matter can go forward. Under the Sonnax
11 factors, this will allow a full and complete resolution,
12 because we have two parties who are outside of bankruptcy, and
13 we have two parties who are inside of bankruptcy. This is --
14 and this is -- although there's not a special tribunal set up
15 to handle a matter like this, this is a Truth in Lending claim,
16 which is a highly technical area. The nonbankruptcy federal
17 court is specifically set up to handle federal issues. And in
18 the interests of justice and the efficiency of administration,
19 I think we are entitled to proceed in the forum that the
20 defendants, not debtors, chose. We did not choose this forum.
21 But that's where we are and there's where we're headed.

22 THE COURT: This was an action -- the Gilberts brought
23 an action against Deutsche Bank and Residential Funding LLC and
24 GMAC Mortgage LLC. Is that correct?

25 MS. PARKER-LOWE: Correct.

1 THE COURT: The district court dismissed it. The
2 Fourth Circuit reversed. The Fourth Circuit -- I have the June
3 20th, 2012 order that denied the motion for rehearing --

4 MS. PARKER-LOWE: Correct.

5 THE COURT: -- and rehearing en banc. Ordered that
6 the mandate issue as to Deutsche Bank America's, David Simpson
7 as substitute trustee, but stay the mandate as to appellees
8 Residential Funding LLC and GMAC Mortgage LLC, because of the
9 automatic stay.

10 MS. PARKER-LOWE: Correct.

11 THE COURT: And so what is it that prevents you from
12 proceeding with your action against Deutsche Bank in the
13 federal district court? The Court reversed -- the Fourth
14 Circuit reversed, denied rehearing and rehearing en banc,
15 issued its mandate. You could go back to the district court
16 and proceed with your case against Deutsche Bank. Who's filing
17 cert?

18 MS. PARKER-LOWE: The defendants have given all
19 indication, although we don't know for sure, but they have
20 hired Sidley Austin and another group of lawyers, which would
21 be an indication that they intend to seek cert.

22 THE COURT: So let's say --

23 MS. PARKER-LOWE: The matter that --

24 THE COURT: -- they do. Let's --

25 MS. PARKER-LOWE: Excuse --

1 THE COURT: -- let's say Deutsche Bank files a
2 petition for certiorari, and the Supreme Court either denies
3 cert or grants cert, and hears; and let's assume that it
4 ultimately hears it and affirms the Fourth Circuit. Okay? So
5 you're a little -- this case may well be over by then, because
6 of the schedule that it's on. How does the stay impact what
7 you're going to do?

8 I mean, if -- the fact of the matter is, if the
9 Supreme Court -- if Deutsche Bank files a petition for
10 certiorari and the Supreme Court hears it, or more likely
11 denies cert, it'll go back to the trial court and the case --
12 no stay as to Deutsche Bank, and you can go ahead with your
13 case. So how are you adversely impacted?

14 If you think you have a claim against any of the
15 debtors and you file a proof of claim against them and you go
16 through the claims allowance process, the debtor may not be
17 bound by what the Fourth Circuit did, but it sure may be pretty
18 persuasive about what the outcome of -- in the claims allowance
19 process. So how are you hurt?

20 MS. PARKER-LOWE: The folks in the clerk's office at
21 the United States Supreme Court tell me that the clock is
22 ticking as to the unstayed --

23 THE COURT: Sure.

24 MS. PARKER-LOWE: -- parties.

25 THE COURT: Yes.

1 MS. PARKER-LOWE: They have an obligation to either
2 file or not file. Assuming that they file, the folks in the
3 clerk's office tell me that then the case will be stopped, hung
4 up.

5 THE COURT: Why is that?

6 MS. PARKER-LOWE: Until there is some ruling from this
7 Court with respect to the two parties that are in bankruptcy.

8 THE COURT: Well, if the ruling you're expecting is a
9 ruling on your motion to lift the stay, you'll have a ruling.
10 I'm not quite sure what it's going to be yet, but you'll have a
11 ruling. I'm not familiar with -- is there something in the
12 Supreme Court rules that would hang it up, as you used the
13 term, where they have a petition for cert from nondebtors, as
14 to which the matter's not stayed, they'll either timely file a
15 petition or they won't?

16 MS. PARKER-LOWE: They tell me they will not entertain
17 the motion as to the unstayed parties until there is a ruling
18 from this Court.

19 THE COURT: Ruling on what?

20 MS. PARKER-LOWE: On whether, at some point, these two
21 parties are going to be released.

22 THE COURT: Oh, you'll have a ruling. You'll have a
23 ruling pretty quickly. That isn't going to hang anybody up.
24 The ruling may be to deny your motion to lift the stay. I
25 don't know yet. But that may be the ruling. Let's assume

1 that's the ruling, what happens then?

2 MS. PARKER-LOWE: Then --

3 THE COURT: I deny your motion to lift the stay; what
4 happens then? Deutsche Bank -- let's assume Deutsche Bank
5 files a petition for cert, I deny the motion to lift the stay;
6 what's your understanding of what happens then?

7 MS. PARKER-LOWE: If we are at -- if we're at the
8 Supreme Court on the petition for cert then we go forward
9 without the two parties.

10 THE COURT: Okay. So all you need is a ruling from
11 me, one way or the other.

12 MS. PARKER-LOWE: Correct.

13 THE COURT: Okay. Fair enough. All right, anything
14 else you want to add?

15 MS. PARKER-LOWE: No, sir.

16 THE COURT: Thank you very much.

17 MR. ROSENBAUM: Good afternoon, Your Honor. Norm
18 Rosenbaum, Morrison & Foerster, for the debtors.

19 Your Honor, it think it's important to just understand
20 what's at stake here. What movants are seeking then, is relief
21 from the automatic stay under which the debtors would then face
22 the decision whether to petition the Supreme Court and go
23 through that route --

24 THE COURT: That's about the least compelling, from
25 your standpoint, frankly. Just like the matter is going

1 forward in the Maine Supreme Court in one of the cases, I mean,
2 if the only issue were whether you were going to sign on to a
3 petition for cert, I'm not particularly moved by that argument.
4 Okay?

5 MR. ROSENBAUM: That's fine. I understand. But
6 that's just step one. I mean, if the cert's denied, then it's
7 remanded back to the district court, in which case the debtors
8 are defending really what are just monetary claims for damages
9 under TILA and various North Carolina statutes.

10 THE COURT: So you -- whether it's binding on you or
11 not, I think you would have to concede that if the Fourth
12 Circuit decision stands, either because the Supreme Court
13 denies cert or if they granted cert and affirmed that decision,
14 whether it has a strict preclusive effect in the claims
15 allowance process, it's going to have an impact. Would you
16 agree with that?

17 MR. ROSENBAUM: I agree with that, Your Honor.

18 THE COURT: So pretty much, you're going to have to
19 live with whatever happens in North Carolina. If the district
20 court goes ahead and tries the case as to Deutsche Bank, and it
21 comes down a really bad decision for Deutsche Bank -- I don't
22 know whether all the issues are the same as to ResCap or not,
23 but let's assume they're pretty much the same -- it isn't going
24 to be helpful to you. Agreed?

25 MR. ROSENBAUM: We would probably be bound. There

1 would be a very strong preclusive effect in any claims
2 resolution process, Your Honor. However, what movant is
3 requesting is that we be drawn back into that litigation which
4 is --

5 THE COURT: I know what they're asking.

6 MR. ROSENBAUM: -- which is at step one. It was just
7 on a motion to dismiss. We'd have to fully litigate it. Our
8 position is that we want to maintain the integrity of our
9 claims resolution process at this stage of the cases; and this
10 is going to be an invitation for every other creditor to do the
11 same.

12 THE COURT: Okay. I understand that. Thank you very
13 much, Mr. Rosenbaum.

14 Ms. Parker-Lowe, anything you want to add?

15 MS. PARKER-LOWE: I think the Court is duty-bound to
16 look at each case on its own merits and not whether or not this
17 is liable to open the floodgates, as the debtor --

18 THE COURT: Whether this is one of the 1,900 actions
19 that are cited --

20 MS. PARKER-LOWE: That are cited by the --

21 THE COURT: -- in the affidavit in support of -- or in
22 opposition to the lift stay motion.

23 MS. PARKER-LOWE: Correct, Your Honor.

24 THE COURT: I will look at each case individually.

25 MS. PARKER-LOWE: Thank you.

1 THE COURT: Thank you very much.

2 All right. I'm going to take this one under
3 submission as well. Thank you.

4 MR. ROSENBAUM: Your Honor, may I just be heard?

5 THE COURT: Yes.

6 MR. ROSENBAUM: Briefly.

7 THE COURT: If it's about this, I've ruled already,
8 so --

9 MR. ROSENBAUM: I just want to clarify, this motion
10 also requested the case be dismissed. I assume --

11 THE COURT: Oh, let me just say --

12 MR. ROSENBAUM: -- counsel is only moving on --

13 THE COURT: -- I want to -- time out. Time out.

14 MR. ROSENBAUM: Sorry.

15 THE COURT: I've had I can't count the number of
16 motions to dismiss this Chapter 11 case that have been raised
17 so far, often by pro se parties, but sometimes by lawyers as
18 well. The motion to dismiss the Chapter 11 case is denied.
19 The record in these Chapter 11 cases from petition date till
20 today establishes there was a good-faith basis to file the
21 cases. I don't intend to address the motion to dismiss in any
22 decision I issue with respect to lift stay.

23 I should have said this before. I'm treating this
24 exclusively as the Gilbert motion to lift the automatic stay.
25 So I'm saying this emphatically, because I keep getting these

1 motions to dismiss the Chapter 11 case, and never supported by
2 any evidence, just assertions that the cases were filed in bad
3 faith.

4 Everything that has occurred in this case since the
5 petition date would establish to the contrary. There's
6 substantial evidence in the record in the form of the first-day
7 1007 affidavit, numerous declarations that have been submitted
8 in various contested matters in this case to date. This is a
9 substantial case with serious issues. The Court concludes and
10 finds that the case was filed in good faith, and whatever the
11 outcome may ultimately be. So that portion of the motion is
12 denied. The motion to lift the automatic stay is taken under
13 advisement.

14 MR. ROSENBAUM: Thank you, Your Honor.

15 THE COURT: Thank you. Mr. Klein?

16 MR. KLEIN: Thank you, Your Honor. Aaron Klein,
17 Morrison & Foerster for the debtors. I believe that concludes
18 our presentation for this afternoon unless --

19 THE COURT: Wells Fargo --

20 MR. KLEIN: There's one more? Wells Fargo? I'm
21 sorry.

22 THE COURT: Wells Fargo.

23 MR. SMITH: Good afternoon, Your Honor. Turner Smith
24 with Curtis, Mallet-Prevost, Colt & Mosle. As Your Honor may
25 know, we are conflicts counsel for the debtors. And we've been

1 asked to take on this matter where we're facing --

2 THE COURT: I apologize. Just tell me your name one
3 more time.

4 MR. SMITH: I'm sorry. Turner Smith.

5 THE COURT: Thank you. It's an --

6 MR. SMITH: You're welcome.

7 THE COURT: -- easy one to remember, and I'm just
8 tired.

9 MR. SMITH: And it's my first time in this case, so --

10 THE COURT: Okay.

11 MR. SMITH: Your Honor, we're close to having a
12 resolution or a potential resolution, but not completely there.
13 So let me just put it into context, and then I'll explain where
14 we are. The case that -- the underlying case is a post-
15 foreclosure money damages case. It's in the Central District
16 of California.

17 THE COURT: What judge?

18 MR. BUNIN: Christina Snyder.

19 MR. SMITH: Snyder. Thank you.

20 THE COURT: Thank you, Mr. Bunin.

21 MR. SMITH: Christina Snyder. The plaintiff in that
22 case has accepted the automatic stay and is not pressing an
23 application to lift the stay. Wells Fargo or Wachovia faces
24 ETS, which is the debtor entity, on cross claims as defendants.
25 There are basically two sets of cross claims for indemnity. So

1 the issue before the Court is whether or not to lift the
2 automatic stay with respect to prosecution of the Wells
3 claim -- Wells Fargo claim against ETS.

4 Now, the benefit of having the motion practice is we
5 now understand better and have had a productive dialog with the
6 litigation counsel in the -- for Wells Fargo in the underlying
7 case. And as we understand it, the key issue for them for
8 lifting the stay, relates primarily to some discovery set of
9 issues.

10 THE COURT: That was the second prong of their motion.

11 MR. SMITH: Right. And so we have what we believe to
12 be a resolution at hand. But it comes in two parts. The first
13 part is a resolution that's within the control of the two
14 parties.

15 THE COURT: All right, go ahead.

16 MR. SMITH: The second part depends upon what the
17 court in the Central District does with respect to an
18 application to extend the trial date. And we're not in a
19 position today to tell you either we've made the application or
20 that the judge has acted favorably on it. But if we can solve
21 that second step, the first step will fall into place, and
22 we'll have a global resolution of the application --

23 THE COURT: They're looking for a trial date --

24 MR. SMITH: -- in support --

25 THE COURT: -- in December?

1 MR. SMITH: The current trial date is December 4 of
2 this year.

3 THE COURT: And what are they --

4 MR. SMITH: The --

5 THE COURT: -- what are they seeking?

6 MR. SMITH: Well we are -- in our attempts to
7 cooperate with them on this two-pronged approach, one of the
8 issues is can we make available parties -- employees within our
9 control for trial on December 4th. And as Your Honor knows
10 from looking at the papers, there is a burden associated with
11 getting witnesses ready for trial. There's a very hands-on
12 litigation department. If you haven't already seen that, you
13 will over the course of the case. And December 4 comes at a
14 very bad time in terms of the litigation department's work in
15 this case and in the many other matters that they have to
16 service.

17 If we can move it out, if we can get the court to
18 agree to move it out to the middle of January of 2013, then all
19 the pieces fall into place and we can resolve this motion.

20 THE COURT: All right. Let me say this. I don't want
21 to ask questions or make any comments that make it any more
22 difficult for the parties to reach an accommodation. When --

23 MR. SHULMAN: Your Honor, Jeremy Shulman for the
24 movant, Wells Fargo, on CourtCall.

25 THE COURT: Yes.

1 MR. SHULMAN: If I could be heard briefly?

2 THE COURT: Yes, go ahead.

3 MR. SHULMAN: I think the idea here, in part, was to
4 sort of put the proposed issues before the Court, and if the
5 Court is willing to weigh in on it, we'd be happy for a
6 recommendation. Unfortunately, there's a little bit of a
7 standstill which is out of our control, because the judge in
8 the Central District controls the trial date.

9 For Wells Fargo's part, the alternative relief in the
10 motion, at least we believe, is fairly clear on the law. We
11 should be entitled to discovery of the ResCap affiliate, ETS,
12 as a third-party witness, with respect to claims that Wells
13 Fargo has to defend. And also that any trial subpoena that
14 Wells Fargo would issue wouldn't be covered by the automatic
15 stay anyway. But due to meet-and-confer efforts before filing
16 this motion, we didn't want to get to the point of trial and
17 have ETS take the position that their witnesses weren't going
18 to show up and seek to hide behind the automatic stay. So we
19 wanted to resolve this up front.

20 THE COURT: Well, let me stop you for a minute. What
21 I need to know is, are you -- Mr. Smith seemed to be asking
22 that this matter be deferred to allow you to try and conclude a
23 resolution which would include asking Judge Snyder to adjourn
24 the trial date. I'm listening to you, and it sounds like
25 you're saying something just the opposite, that you want to

1 press your motion today. Which is it?

2 MR. SHULMAN: Well, I'm in a difficult position in
3 that I sort of have to press my motion. But if we can agree on
4 a short adjournment of this motion to go back to Judge Snyder,
5 I'm happy to support any application to move the trial date.
6 But as I've expressed to Mr. Smith in our meet-and-confer
7 efforts, Judge Snyder's already moved the trial date, is aware
8 of what we're trying to accomplish in the bankruptcy, and has
9 expressed to me that she believes she's already given us enough
10 time to do it.

11 So because of that, I'm a little leery of putting over
12 the date for -- even to the next omnibus date in August.
13 Because if it's not resolved, and the trial date is not moved,
14 and the existing discovery cutoff stands at September 17th, and
15 we're at August 14th without a resolution, even if the motion
16 is granted, attempting to get the discovery done in that time
17 window and prepare a summary judgment motion due for filing a
18 couple weeks later, becomes incredibly pressed, at best.

19 THE COURT: Okay. I need to know from the two of you
20 whether this matter is going forward for a decision today or
21 not. I don't want to know what problems you have. I've got
22 problems. The next omnibus hearing date is August 14th. If
23 the two of you agree, it'll be adjourned to then. You can
24 contact Judge Snyder and see whether she'll move the trial
25 date. If not, let's go forward and argue this motion.

1 MR. SHULMAN: Well, for the moving party, then my
2 suggestion is to go forward and argue the motion. The
3 resolution that we proposed before would be that there's an
4 agreement to do the discovery and there's an agreement that
5 they'll comply with any trial subpoena that's issued, and --

6 THE COURT: Well, I don't want to know about
7 agreements. Because if there's an -- do you have an agreement
8 that's been reflected in some writing, you're asking the Court
9 to approve or if the Court's approval isn't required?
10 Agreements -- you know, both sides have to agree.

11 MR. ROSENBAUM: Your Honor, Norm Rosenbaum. We're not
12 involved in this matter, but Ms. Goliar (ph.) would like to
13 confer with her counsel for a minute, if that's okay?

14 THE COURT: Okay. Let's -- all right, go ahead and
15 confer with the counsel. We're going to hold off a minute
16 while counsel confers in the courtroom.

17 MR. SHULMAN: Thank you.

18 THE COURT: Okay. While we're doing that, let me just
19 say, one of my law clerks pointed out to me that August 9th at
20 11 a.m. has a number of ResCap matters on. And so if the
21 parties are in agreement to adjourn this to August 9th, that's
22 a possibility. I'm not pressing anybody to do anything. I'm
23 just -- I knew that the 14th, August 14th was an omnibus day.
24 We've got a very crowded calendar as of now. But August 9th
25 has just a few matter on it in ResCap.

1 All right It's 3:25 on the clock in the courtroom.
2 We're going to take a ten-minute recess while parties confer.

3 (Recess from 3:22 p.m. until 3:36 p.m.)

4 THE COURT: All right. We're back on the record in
5 Residential Capital, number 12-12020. Mr. Smith?

6 MR. SMITH: Yes, thank you, Your Honor. Turner Smith,
7 Curtis Mallet-Prevost. Time well spent over the break. I
8 think we have a resolution of the motion. The debtors will
9 provide declarations to Wells Fargo for the case. And we
10 have -- that will take place over the coming weeks. And we've
11 agreed to work with Mr. Shulman on getting those out the door.

12 The second prong that we discussed before is the
13 question of providing witnesses at trial. To the extent that
14 we still employ witnesses who are -- we will accept a subpoena
15 and produce them for trial. The parties have agreed that they
16 will make a joint application to the judge in the Central
17 District of California to move the trial date to some date
18 after January 14 of 2013. But in order to resolve this motion,
19 the debtors have agreed to live by the existing schedule if we
20 cannot convince the judge to make that small adjustment to the
21 trial date.

22 THE COURT: All right. Let me ask the question. Has
23 there been a discussion about document production?

24 MR. SMITH: There have -- we have not discussed
25 document production, but document production is complete,

1 actually, in the case, on our part. And the only discovery
2 that we have discussed for purposes of resolving the case, is
3 providing the declarations.

4 THE COURT: Declarations for a summary judgment
5 motion?

6 MR. SMITH: As I understand it, they are intended to
7 be used for summary judgment, yes.

8 THE COURT: Okay.

9 MR. SHULMAN: That's correct, Your Honor.

10 THE COURT: All right. Anything else you want to add
11 for Wells Fargo?

12 MR. SHULMAN: The only caveat I would add is I presume
13 that this will be settled by formal stipulation and order.

14 THE COURT: Yes. That's what I would ask for. You
15 ought to get a stipulation and order presented to the Court
16 within the next week, certainly.

17 MR. SMITH: We will do that, Your Honor. And in the
18 meanwhile, we're going to move ahead with the two component
19 parts, because time is running in the other case.

20 THE COURT: All right. I'm glad you were able to
21 resolve those issues.

22 MR. SMITH: Thank you for the time to do that, Your
23 Honor.

24 THE COURT: Thank you very much.

25 MR. SHULMAN: Thank you, Your Honor.

1 THE COURT: Thank you. Okay.

2 MS. FREJKA: Your Honor, Elise Frejka for the
3 committee. Very quickly. We'd like to review a copy of the
4 stipulation and order before it's submitted to Your Honor. We
5 have been involved in the resolution of the two uncontested
6 lift stay motions, and we've also been involved in the status
7 and supporting the debtor in the three that went forward today.
8 So --

9 THE COURT: Absolutely.

10 MS. FREJKA: -- we are staying on top of things. Thank
11 you.

12 THE COURT: Thank you very much.

13 Mr. Marinuzzi, anything else?

14 MR. MARINUZZI: Your Honor, I think that finally
15 concludes the calendar. Thank you.

16 THE COURT: Okay. So let's just -- preview. August
17 9th is -- what do we have for August 9th? Retention
18 applications, KPMG retention application, hearing on the KEIP-
19 KERP --

20 MR. MARINUZZI: Correct, to the extent that's not
21 concluded on the 8th. Yes. I'm hopeful that the retention
22 applications will be straightforward. PWC may have some hairs
23 on it because it relates to some of the issues discussed
24 earlier today regarding obligations between the parent and
25 ResCap in connection with the consent order.

RESIDENTIAL CAPITAL, LLC, et al.

163

1 THE COURT: Okay. All right. Anybody else have
2 anything they want to add?

3 We're adjourned. Thank you.

4 IN UNISON: Thank you, Your Honor.

5 (Whereupon these proceedings were concluded at 3:40 PM)

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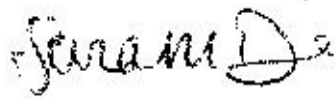
RULINGS

	Page	Line
Motion to retain Towers Watson approved	107	18
Motion to retain Fortace, LLC approved	108	2
Debtors' motion to retain Severson & Werson approved	108	12
Debtors' motion to extend time to file schedules and statements granted	108	21
Centerview retention application approved subject to review of final order	111	25
FTI retention application is approved	116	11
U.S. Trustee's objection re: Moelis' retention application is sustained in part and overruled in part, as delineated on the record	128	17
Committee's application to retain Moelis is granted as modified on the record	131	15
Motion to dismiss the Chapter 11 cases is denied	152	18
Stipulation and order to be presented to the Court on the Wells Fargo resolution	161	14

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C E R T I F I C A T I O N

I, Sara Davis, certify that the foregoing transcript is a true
and accurate record of the proceedings.



SARA DAVIS

AAERT Certified Electronic Transcriber CET**D 567

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Date: July 25, 2012